


3 1761 11891028 0









Digitized by the Internet Archive  
in 2024 with funding from  
University of Toronto

<https://archive.org/details/31761118910280>









CANADA

# Debates of the Senate

2nd SESSION

• 36th PARLIAMENT •

VOLUME 138

• NUMBER 30

OFFICIAL REPORT  
(HANSARD)

Tuesday, February 22, 2000

THE HONOURABLE GILDAS L. MOLGAT  
SPEAKER





## CONTENTS

(Daily index of proceedings appears at back of this issue.)

---

*Debates*: Chambers Building, Room 943, Tel. 996-0193

Published by the Senate

Available from Canada Communication Group — Publishing, Public Works and  
Government Services Canada, Ottawa K1A 0S9,

Also available on the Internet: <http://www.parl.gc.ca>



## THE SENATE

Tuesday, February 22, 2000

The Senate met at 2:00 p.m., the Speaker in the Chair.

Prayers.

### SENATORS' STATEMENTS

#### ARCHBISHOP DESMOND TUTU

BESTOWAL BY UNIVERSITY OF TORONTO  
OF HONORARY DOCTORAL DEGREE

**Hon. Vivienne Poy:** Honourable senators, I am pleased to report that, last Tuesday, I had the honour to attend the convocation ceremony at the University of Toronto for the awarding of an honorary Doctorate of Laws degree to Archbishop Desmond Tutu.

Honourable senators, I know that none of you need an introduction to Archbishop Tutu. A Nobel Peace Prize laureate, a giant of humanitarianism, Archbishop Tutu is a living symbol of the triumph of love, forgiveness and reconciliation. Accused of being a terrorist by the apartheid regime in his homeland, this man of peace repeatedly risked imprisonment for his advocacy of sanctions against South Africa by the international community. Desmond Tutu condemned the use of violence by apartheid opponents and has consistently sought a peaceful, negotiated reconciliation between the black and white communities.

I regret, honourable senators, that my words simply cannot convey the depth of emotion in the Great Hall of Hart House at the University of Toronto. In what I can describe only as an overwhelmingly moving speech, Archbishop Tutu spoke with humility and humour. He urged the audience to acknowledge humanity's extraordinary capacity for forgiveness.

Over the last few years, the world has watched events unfold in South Africa, as it has made the transition from apartheid to a truly democratic government. The South African belief of "Ubuntu" — the essence of being human — far outweighs the way most of the world deals with conflicts: by anger, force and revenge.

Archbishop Tutu was the chairman of South Africa's Truth and Reconciliation Commission, where perpetrators of some of the most heinous crimes were given amnesty in exchange for a full disclosure of the facts and the offences. We now know that there is a viable option for the rest of the world in dealing with long-standing disputes.

Honourable senators, the archbishop declared that forgiveness is the only way to end bloodshed and sectarian strife, and make

possible a new beginning. Only along the path of restorative justice — not retribution and revenge — can we recognize the essence of our common humanity and find true healing and meaningful reconciliation.

Honourable senators, we in Canada have much to learn from Archbishop Tutu in his lesson of humanity, reconciliation and communal harmony, as we seek to build a more compassionate, tolerant and multicultural Canada.

#### NAVAL OFFICERS' ASSOCIATION OF CANADA DEFENCE ASSOCIATIONS NATIONAL NETWORK

**Hon. J. Michael Forrestall:** Honourable senators, I should like to take a few minutes to tell you about the excellent work being carried out by the Maritime Affairs Bureau of the Naval Officers' Association of Canada, and the Defence Associations National Network. Both groups, honourable senators, are attempting to educate Canadians on issues of national security through their publications and Web sites. The Maritime Affairs Bureau of the Naval Officers' Association of Canada publishes a highly readable journal entitled *Maritime Affairs*. The journal is edited by Mr. Peter Haydon, a senior research fellow of the Canadian Institute for Strategic Studies and a fellow of the Centre for Foreign Policy Studies at Dalhousie University.

*Maritime Affairs* covers everything from naval-oriented defence articles by experts in the field to oceans management, issues and shipping. I highly recommend the NOAC Web site at [www.naval.ca](http://www.naval.ca), which carries many articles on maritime security issues. Additionally, the work of Admiral Dan Mainguy, the editor of the Defence Associations *National Network News*, is an excellent complement to *Maritime Affairs*.

• (1410)

Where *Maritime Affairs* is naval oriented, *National Network News* publishes articles on a wide range of national security issues, ranging from disarmament to national strategy. They also have an excellent Web site, [www.sfu.ca/~dann/](http://www.sfu.ca/~dann/) that includes some of the articles found in the newsletter.

These two groups dedicated to the national security of Canada, the Naval Officers' Association of Canada and the Defence Associations National Network, are helping to educate Canadians on defence and national security issues. I believe their work should be applauded and upheld, as they are largely operating in the vacuum of —

**The Hon. the Speaker:** I regret to have to interrupt the Honourable Senator Forrestall, but his three-minute time period has expired.



**Senator Forrestall:** I have but four words remaining. May I conclude?

**The Hon. the Speaker:** Is that agreed, honourable senators?

**Hon. Senators:** Agreed.

**Senator Forrestall:** — scholarly Canadian defence publications.

### SCOUT-GUIDE WEEK

**Hon. Mabel M. DeWare:** Honourable senators, I rise in celebration of a week that has special meaning for a great many Canadians, including some of us in this chamber, and that is Scout-Guide Week, which started on Sunday.

Scout-Guide Week gives us an opportunity to think about the importance of scouting and guiding in the lives of young people. It is also an occasion to salute the many people who give their time and skills to promote the personal growth and development of our children and young adults, and it is a time to remember the founders of the international scouting and guiding movement, Lord and Lady Baden-Powell, who started scouting in 1907 and guiding in 1909.

I am pleased to report that both scouting and guiding are thriving in Canada today.

Scouts Canada, which has started to offer coeducational programs, has a total membership of 212,000 youth and adults. Participants include Beavers, Cubs, Scouts, Venturers and Rovers, as well as adult leaders.

Guides Canada, which offers programs for girls led by women, has over 230,000 members. More than 180,000 girls are involved in Sparks, Brownies, Guides, Pathfinders and in the senior branches, which include Cadets, Junior Leaders and Rangers. Some 42,000 women serve as dedicated leaders.

Honourable senators, these figures, as impressive as they are, tell only part of the story. They do not reflect the many adult Canadians who have benefitted from scouting and guiding programs in their youth. I conducted an informal survey of fellow senators to find out how many have been involved in guiding and scouting, whether as children or as adults. Based on the replies I received, believe it or not, it appears that approximately one-half have some experience with scouting and guiding. We may have been former Cubs, Scouts, Brownies or Guides volunteer leaders, supporters, or the proud parents or grandparents of children involved. At the very least, I am sure most of us have bought Girl Guide cookies.

Our Speaker, the Honourable Gildas Molgat, is an honorary member of Scouts Canada, and Senator Di Nino is a former vice-president of the National Council of Boy Scouts of Canada. As well, he is presently an honorary officer of Scouts Canada.

In my own case, I was a Guide and a Lieutenant, and my family has been very involved. At present, I have a district

commissioner, a Guide advisor for the province of New Brunswick, a senior branch coordinator for New Brunswick, a district Scout representative, and two Queen's Scouts in my family.

Today, from 3:00 to 3:30 p.m. in the Hall of Honour, the Girl Guides of Canada will be dedicating their flag, after 91 years. Although the Senate will likely be sitting then, I encourage honourable senators to go out and support these young people.

As we celebrate this week, I invite all honourable senators to join me in commending Scouts Canada and Guides Canada, the volunteers who make their wonderful programs possible and, not least, our young people who benefit from them.

### BLACK HISTORY MONTH 2000

HALIFAX, NOVA SCOTIA—SPEECH BY GOVERNOR GENERAL

**Hon. Donald H. Oliver:** Honourable senators, the black community of Nova Scotia was deeply honoured last weekend when her Excellency the Right Honourable Adrienne Clarkson, the Governor General of Canada, made a moving speech at the Black Cultural Centre in Dartmouth, Nova Scotia, in keeping with February's Black History Month celebrations. Hundreds of blacks throughout the province jammed the main hall to hear Her Excellency speak glowingly of the contribution Nova Scotian blacks have made to the development of this great country. She said:

This is African Heritage Month, as I know you all know. It is a chance to celebrate history, achievement and contributions of black Canadians — a vibrant heritage that goes back to the roots of the communities of this country. And it's a heritage that we should not limit ourselves to celebrating just one month, because it's full of daily, weekly and yearly accomplishments — past, present and future.

She spoke of how "the history of blacks in Nova Scotia goes back centuries," with the Loyalists, those fleeing slavery, refugees of the War of 1812, and the immigrants from the West Indies who came to work in the mines in the early 1900s. She said:

You cannot talk about the history of Nova Scotia without talking about the history of these people. I can only imagine how discouraging it must be, when you have been here longer than almost everybody else, to be asked, "When did you arrive?"

In speaking of the history of blacks in Canada, Governor General Clarkson said:

...all too often, this history has not been kind. Slavery was not abolished in Canada until 1834. And it has taken much longer for the laws of our country to become colour blind. Even now, despite the equality outlined in the books, it's not what you necessarily encounter in real life, at work, on the streets.



She also referred to the speech I made in reply to the Speech from the Throne in November. She said:

[Translation]

The Honourable Donald Oliver, who is one of your Honorary Life Members, recently spoke in the Senate about the fact that negative stereotyping of visible minorities still exists. He said, and I agree, that the answer to racism lies in education and discussion — people have to learn about each other to begin to understand each other. Your Centre plays a role in this. It brings the black communities together to celebrate your complex heritage and to provide support for future achievements. And it showcases this to others. The wealth of your heritage is a great key to the future. It's a heritage that should not be relegated to one month, and I congratulate everyone involved in this Centre for celebrating it every day of the year.

The Black Cultural Centre of Nova Scotia is an excellent example of how visible minority communities have taken it upon themselves to celebrate their heritage and provide support to, and deal with, the complex problems of racism, inequality and discrimination.

This is the second time that a Governor General of Canada has come to speak to the centre. In 1997, the Honourable Roméo LeBlanc, former speaker of this house, gave an address on the occasion of the Black Cultural Centre's twentieth anniversary.

Governor General Clarkson was in Nova Scotia for six days, where she visited countless schools, government offices and galleries; but to the blacks of Nova Scotia, it was her symbolic visit to the Black Cultural Centre and to Pier 21 that were the most important.

#### PAGES EXCHANGE PROGRAM WITH HOUSE OF COMMONS

**The Hon. the Speaker:** Honourable senators, before I proceed to the next item on the Order Paper, I should like to recognize the pages from the House of Commons who are here this week on the exchange program. Adeline Leung is studying political science at the Faculty of Social Sciences at the University of Ottawa. Adeline is from Vancouver, British Columbia.

[Translation]

David Wilkinson of Baie-d'Urfé, Quebec, is a history student in the Faculty of Arts at the University of Ottawa.

[English]

On behalf of all honourable senators, I welcome Adeline and David to the Senate. We hope that your week with us will be interesting and instructive.

## ROUTINE PROCEEDINGS

### SIR JOHN A. MACDONALD DAY BILL

#### FIRST READING

**Hon. Normand Grimard** presented Bill S-16, respecting Sir John A. Macdonald Day.

Bill read first time.

**The Hon. the Speaker:** When shall this bill be read the second time?

On motion of Senator Grimard, bill placed on Orders of the Day for second reading on Thursday, February 24, 2000.

[English]

• (1420)

### CANADA-JAPAN INTER-PARLIAMENTARY GROUP

SEVENTH GENERAL ASSEMBLY OF ASIA-PACIFIC PARLIAMENTARY  
CONFERENCE ON ENVIRONMENT AND DEVELOPMENT—  
REPORT OF CANADIAN DELEGATION TABLED

**Hon. Isobel Finnerty:** Honourable senators, I have the honour to table in both official languages the report of the delegation of the Canada-Japan Inter-Parliamentary Group to the seventh general assembly of the Asia-Pacific Parliamentary Conference on the environment and development, held in Chiang Mai, Thailand, from November 20 to 23, 1999.

[Translation]

### TRANSPORT AND COMMUNICATIONS

NOTICE OF MOTION TO AUTHORIZE COMMITTEE TO STUDY  
AND POLICY ISSUES FOR THE 21ST CENTURY  
IN COMMUNICATIONS TECHNOLOGY

**Hon. Lise Bacon:** Honourable senators, I give notice that on Wednesday, February 23, 2000 I will move:

That the Standing Senate Committee on Transport and Communications be authorized to examine and report upon the policy issues for the 21st century in communication technology, its consequence, competition and the outcome for consumers, and

That the Committee submit its final report no later than June 15, 2001.



[English]

## FUTURE OF CANADIAN DEFENCE POLICY

### NOTICE OF INQUIRY

**Hon. J. Michael Forrestall:** Honourable senators, I give notice that on Tuesday, February 29, 2000, I will call the attention of the Senate to the future of Canadian defence policy.

## QUESTION PERIOD

### NATIONAL DEFENCE

#### BAN OF MILITARY EQUIPMENT—STATEMENT BY LEADER OF THE GOVERNMENT

**Hon. Gerald J. Comeau:** Honourable senators, I should like to come back to some comments made last week by the Leader of the Government in the Senate in which he said he would like to ban all military equipment, including helicopters. What concerns me is that he may not be aware or may have forgotten that the purpose of this equipment is much more than military. In fact, the military helicopters are used in large part for search and rescue. The Aurora is used for search and surveillance and protection of our ocean resources. As well, the navy ships are used in the protection of our ocean resources and our fishermen.

Was the minister's statement last week a reflection of the thinking around the Chrétien cabinet table? If not, will he retract his statement?

**Hon. J. Bernard Boudreau (Leader of the Government):** Honourable senators, I thank the honourable senator for giving me this opportunity to rise on that issue. It seems that Honourable Senator Forrestall and I generated a little bit of a political debate in Nova Scotia, however accidentally. The debate resulted in one group feeling that I was advocating the unilateral disarmament of the Armed Forces of Canada, and another group maintaining the opinion that Senator Forrestall was not in favour of world peace.

I assured all whom I could that neither conclusion was correct. I was sure, although we had never discussed it in detail, that Senator Forrestall was firmly in favour of world peace and that any impression to the contrary would be incorrect. Equally, I want to make it clear that, while I do look forward to the day when no military equipment will be necessary for military purposes, if there are other purposes to which such equipment could be put, that is wonderful.

As to the honourable senator's specific question, I am not advocating, nor is this government, the unilateral disarmament of the Canadian Armed Forces.

### REPLACEMENT OF SEA KING HELICOPTER FLEET

**Hon. Gerald J. Comeau:** Honourable senators, this equipment has, of course, been used for many years, and for purposes other than strictly military ones.

The Leader of the Government's comments came last week at the same time that the Prime Minister decided to hand the first maple leaf flag back from the Liberal Party of Canada to the Canadian people, to whom it rightfully belongs. I was a bit unhappy with the fact that our first flag had been confiscated by a political party rather than having been placed in a national institution.

Given that we have cleared the air on the use of this equipment, could the minister tell us when we might expect a final answer on the future of the Sea King helicopters? Could he give us an answer today?

**Hon. J. Bernard Boudreau (Leader of the Government):** Honourable senators, regretfully, I cannot give that answer today. I have indicated in the past in this place that the Minister of National Defence has made unequivocal statements with respect to his position that the Sea Kings' replacement is on the top of his priority list. I am confident that the Minister of National Defence, with the support of his colleagues, including myself, will be able to see this program realized in due course.

## INDUSTRY

### INCREASE IN FUEL PRICES

**Hon. J. Michael Forrestall:** Honourable senators, fortunately, my high blood pressure will not allow me to respond to those comments by the Leader of the Government. My question, however, is for him. He will anticipate what I am coming to when I tell him that it is quite a scene not only to see, but to have to drive by, 500 or 600 large trucks on the highway between New Brunswick and Nova Scotia, where they remain.

There is a crisis in the country, both for people who heat their homes with oil and for people who run these large trucks. The trucking industry is suffering from high fuel prices. Over the weekend, I received pleas at my house from more than one family for home heating fuel. These families have no fuel in the oil tank, and they do not have enough money to buy more than 40 or 50 gallons. Unfortunately, the fuel companies will not deliver anything under 200 or 300 gallons, or whatever the number is.

It is a crisis situation, honourable senators. I do not particularly agree with the tactics of blocking the highways or denying delivery of medical supplies and other vital commodities, but I certainly understand and sympathize with the plight of truckers.

What is the government doing to confront this growing fuel crisis in the trucking industry, in particular, and in the country in general? As the minister will know, already in front of the Parliament buildings are several very large trucks, and the number is growing.



**Hon. J. Bernard Boudreau (Leader of the Government):** Honourable senators, before I get to the specific question, I should like to say that, with respect to the honourable senator's position on world peace, I hope I did not mislead or in any way upset the senator. I indicated clearly that I thought that the honourable senator was in favour of world peace, perhaps without understanding precisely what his position is on that issue. If I stand corrected, I will advise anyone else I speak to that that is not the case.

Concerning the question of the oil prices, and in particular the diesel prices for the truckers, indeed there have been increases which have worked a great hardship on them. One can sympathize with their position as they see their profit margins shrink. The Government of Canada does not have the jurisdiction to regulate the price of refined oil products, including diesel fuel, gasoline and heating oil.

• (1430)

Clearly, and I do not think anyone disputes this, the jurisdiction for regulation of these commodities rests with the province. I can recall being reminded of that only a few years back when similar circumstances arose. Canada presently has the second lowest price for gasoline among the G-7, second only to the United States.

Honourable senators, this issue is a matter of concern and the Competition Bureau must continue to monitor whether any price change is potentially caused by illegal practices. Subject to that caveat, though, this matter is clearly within the jurisdiction of the provinces.

**Senator Forrestall:** Honourable senators, do I understand correctly that the government has no immediate contingency plans to help out in this matter? If the provinces were to seek the cooperation of the federal authority in some way — and several options are available — is the federal government prepared to act with the provinces, individually or collectively, to ease the burden on homeowners and truck operators?

**Senator Boudreau:** Honourable senators, I would not want to pre-judge and make a categorical statement with respect to any future proposal that might come forward from one or all of the provinces. I can simply say that, as of this point, the jurisdictional issue is clear and the Competition Bureau must remain vigilant. We also must encourage the oil-producing countries — OPEC, in particular — to release more supply on to the market. I do not suggest that that is the full answer, but the restriction of supply, together with the high demand over recent months, has added to the current situation. We can usefully urge those countries to release additional supply. There is some indication that those discussions are already taking place.

**Senator Forrestall:** Honourable senators, there are indications that this thrust is already taking place. Can the minister tell us, unequivocally, whether representations have been made to OPEC to follow just such a trend because of the impact price increases are having on northern countries around the world?

**Senator Boudreau:** Honourable senators, my reference was to reports that I had read, the same reports which would be available to the honourable senator, suggesting that some consideration was being given to this discussion by the oil-producing countries themselves.

The only federal mechanism that might potentially reduce oil prices would be the reduction of relevant federal taxes. By comparison, when we look at our level of taxation in this particular area compared with the other G-7 countries, we are already at the lower end of the scale.

## HUMAN RESOURCES DEVELOPMENT

### JOB CREATION PROGRAMS—POSSIBLE MISMANAGEMENT OF FUNDS—REQUEST FOR INDEPENDENT AUDIT

**Hon. W. David Angus:** Honourable senators, it is evident that Canadians wish us to press on with our questions regarding HRDC's gross mismanagement of its billion-dollar slush fund, despite the stonewalling and evasive tactics of the HRDC minister, of the Prime Minister and of the rest of the Liberal government including, sadly, its leader in this place.

To date, Canadians have not been given the clear answers nor the explanations they need and deserve. All Canadians are getting is spin. We learned last week that this Liberal government has brought in political spin doctors to help them suppress this scandal. Incredibly, an image consultant has been hired for the minister to help her avoid the heat and pass the buck. If she cannot stand the heat, she should get out of the kitchen and resign. Let us face it; she has lost it if she cannot cope.

Honourable senators, yesterday, the government released a list of grants covering the period 1996-99. My staff and I have spent considerable time poring over the pages. Given that this list was cobbled together only after Minister Stewart had been caught with her hand in the cookie jar, there are a number of mistakes and omissions in this 10,000-page tome. In fact, the minister's department has admitted that some information would be inaccurate and incomplete. They have also admitted that they have not checked to verify just how many jobs, if any, have been created, and this despite the minister's repeated assurances in Parliament that 30,000 jobs resulted from these grants.

My question is to the Leader of the Government in the Senate. Given that the list of grants is known and admitted to be inaccurate and incomplete, and that this is likely to be the only documentation forthcoming from HRDC, will the government allow third-party, independent, private-sector auditors to investigate the distribution of Transitional Jobs Fund grants so that Canadians may know what happened to \$1 billion of their hard-earned money?

**Hon. J. Bernard Boudreau (Leader of the Government):** I thank the honourable senator for raising that issue again. I was afraid perhaps we would not have an opportunity to get back to the subject.



In case it is not patently obvious to the honourable senator where he sits, I have not had any image consulting done since I have taken my position.

The type of disclosure that has been made here with respect to HRDC files is quite unprecedented. There are huge numbers and volumes of files. Even the logistics create a problem because honourable senators have repeated information with respect to these individual files. I indicated that I would make my best efforts in that regard. Indeed, this information has come forward, as the honourable senator noted in his question.

Disclosing this amount of material following an audit, which I keep reminding honourable senators was initiated by the department itself, is absolutely unprecedented.

**Senator Forrestall:** Has the honourable leader read it all?

**Senator Boudreau:** If someone were to say that there were no discrepancies of any kind among the 30,000 files now presented, I would be absolutely amazed. That would apply to any organization, whether in the private sector or public sector.

One must commend the honourable minister for continuing a policy of disclosure, both with respect to the initiation and release of the audit, and the subsequent release of all of this information.

**Senator Angus:** The cover-up is not working, honourable senators. At the last election, Canadians were asked to vote for the Liberals because they promised to provide accountability, integrity and transparency.

**Some Hon. Senators:** Hear, hear!

#### JOB CREATION PROGRAMS—POSSIBLE MISMANAGEMENT OF FUNDS—REQUEST FOR INQUIRY

**Hon. W. David Angus:** This sordid scandal at HRDC, now known as Shovelgate, is of a \$1-billion proportion. It has proven to Canadians that they were sold a bogus bill of goods in the last general election. Instead of leadership, we have seen an abdication of responsibility. Instead of integrity, we have seen a minister and a Prime Minister misleading the public day after day. Instead of transparency, we have seen a government withholding information that the people of Canada are demanding to have and deserve to have. Clearly, in light of the HRDC minister's abuse and mismanagement of the distribution of billions of dollars, those promises were broken one after the other.

• (1440)

My supplementary question to the minister is this: Will this government show real transparency and conduct a full inquiry into this sordid scandal? Will the government show real accountability and accept the resignation of the HRDC minister?

**Hon. J. Bernard Boudreau (Leader of the Government):** Honourable senators, what we have seen is unprecedented disclosure and transparency. This is not the first time that an

audit has been conducted at HRDC. One was done in 1991. I was not in this place at that time, but I do not remember any disclosure by the former government which would have come close to the disclosure by the current minister.

Honourable senators, I think the minister is to be commended. She has been completely transparent. I have made the statement here in this chamber that more than one half of the Transitional Jobs Fund grants have gone to opposition ridings, in terms of both numbers and dollars. That proof now lies in the Library of Parliament, where there are tens of thousands of pages that support my statement. I invite anyone who is interested to examine them in great detail to determine that fact.

This past weekend, I spoke at an event of a political nature.

**Some Hon. Senators:** Oh, oh!

**Senator Boudreau:** Yes, it happens occasionally.

We were discussing the very question of HRDC. One fact I was reluctant to share with them was that most of the Transitional Jobs Fund money had gone to opposition ridings.

**Senator Angus:** Honourable senators, as we all know, there was no Transitional Jobs Fund in 1991. Will the Leader of the Government in the Senate tell us what evidence he has to justify making that statement?

**Senator Boudreau:** My reference was to an HRDC audit, honourable senators, and that reference stands.

**Senator Lynch-Staunton:** There was no HRDC then! It was created in 1993.

**Senator Boudreau:** I can only assume that the information in *The Ottawa Citizen* is correct, namely, that Peter MacKay, the Conservative house leader — perhaps the most prominent elected Conservative in Nova Scotia if not in the country, who knows —

**Senator Lynch-Staunton:** What about Ralph Klein and Mike Harris?

**Senator Boudreau:** — received \$31.9 million in his riding. I do not think he objected to his riding receiving a cent of that money.

**Senator Angus:** Sky shops!

#### JOB CREATION PROGRAMS—POSSIBLE MISMANAGEMENT OF FUNDS—GRANTS TO WINNIPEG CENTRE

**Hon. Terry Stratton:** Honourable senators, the minister was asked a question last week about Winnipeg Centre, which includes a very depressed area in the inner city of Winnipeg. The documentation shows very little, if any, monies flowing into that riding, where the unemployment rate is substantially high. How can you justify \$200,000 for a fountain in the Prime Minister's riding and no money in an inner city riding with a high rates of unemployment and poverty?

**Senator Ghitter:** They gave it to Wal-Mart!

**Hon. J. Bernard Boudreau (Leader of the Government):** Honourable senators, to date, I have taken from the comments of honourable senators opposite that we do not want to get into riding-by-riding considerations. However, we can do that. With sufficient notice, I can retrieve the figures on every riding. Two ridings have been mentioned: Winnipeg Centre and Vancouver East. I have requested information on those two ridings but I still have not received it. I hope to receive information as early as tomorrow on Vancouver East, which riding is held by the New Democratic Party. There was some suggestion that they had received only one grant through the Transitional Jobs Fund. I asked about that and the answer I received was simple: They only applied for one, which is why they only received one.

I do not know the specifics of the Winnipeg Centre riding, but I will attempt to obtain that information as early as tomorrow.

#### JOB CREATION PROGRAMS—POSSIBLE MISMANAGEMENT OF FUNDS—DISTRIBUTION OF GRANTS

**Hon. Marjory LeBreton:** Honourable senators, last week I asked about the Transitional Jobs Fund and the Canada Jobs Fund. Specifically, I wanted breakdowns — and, I am wondering if the Leader of the Government in the Senate now has them — of those funds prior to and following the 1997 election. As I pointed out last week, many of those ridings were government-held ridings before the 1997 election.

**Hon. J. Bernard Boudreau (Leader of the Government):** Honourable senators, I wish to add that substantial federal government program funding in other areas went to the Vancouver East riding. I can provide that information if anyone is particularly interested in it.

With respect to the question last week regarding the exact details, I have no better access to that information now than does the honourable senator. It is all available publicly. If anyone wants to do the work to determine how many grants went where and at what particular time, the information on which to make those calculations is now available.

#### JOB CREATION PROGRAMS—POSSIBLE MISMANAGEMENT OF FUNDS—GRANTS TO WINNIPEG CENTRE

**Hon. Mira Spivak:** Honourable senators, with regard to the riding of Winnipeg Centre, I was the senator who asked the question. Can the Government Leader take the pains to go behind the information passed out in some of those documents? According to the MP for that area, the amount stated as having been allocated to that constituency included the salaries of the civil servants employed there and not any special grants. I have no knowledge of the accuracy of that statement. However, I caution the minister that merely looking at the figure might not give him the answer.

**Hon. J. Bernard Boudreau (Leader of the Government):** Honourable senators, that is why I hope to get a figure from the

department with respect to that specific riding. I have information which is simply information that was reproduced in *The Ottawa Citizen*. I do not know how reliable it is. Perhaps I will rely on the opinion of others in this chamber. It is reported in that paper that:

NDP MP Pat Martin accused the government of stiffing his Winnipeg Centre riding on transition fund grants. But the list shows —

— therefore, someone must have looked at it —

— his constituency received just under \$141 million in other jobs grants plus another \$463,000 in social development grants.

I cannot vouch for the accuracy of *The Ottawa Citizen*, but that is what they reported today.

**Senator Angus:** It is a good start, though!

#### FOREIGN AFFAIRS

##### UNITED STATES—PROPOSAL TO DEVELOP BALLISTIC MISSILE DEFENCE SYSTEM—REQUEST FOR INFORMATION

**Hon. Douglas Roche:** Honourable senators, my question is directed to the Leader of the Government in the Senate.

This week, Canada's European allies, notably France, registered concern in Washington about current U.S. development of a ballistic missile defence system. Not only will the deployment of such a system fracture NATO solidarity but also Russia and China have protested, saying that such a missile defence system will reignite arms races.

What is Canada's position on this extremely important issue?

**Hon. J. Bernard Boudreau (Leader of the Government):** Honourable senators, I thank the honourable senator for his question. Frankly, I am not aware of either Canada's or the minister's position, if he has expressed one to date. However, I shall carry the question to the minister and ask for a response for the honourable senator.

• (1450)

**Senator Roche:** Honourable senators, I should like to ask if the minister would undertake to table in the Senate the relevant documentation on Canada-U.S. discussions on this matter so that the Senate can review the arguments for and against Canadian involvement in a defence system that would be in conflict with the 1972 anti-ballistic missile treaty.

**Senator Boudreau:** Honourable senators, I am certainly not aware, at this stage, of what documents exist, their details or what the possible objections might be to the release of some of that material. I can give only the undertaking that I will pass along the honourable senator's request to the minister and bring back the minister's response.



**Senator Roche:** Honourable senators, I respect what the minister has said. However, I think his answer is a little too soft, if I may say so respectfully. The minister referred to possible objections by the department to the release of this information. I rather think that the Parliament of Canada, of which this is one institution, has a prior right to every bit of information that is not of a classified nature as such but that does reveal the content of the ongoing discussions. Only then can we in this place, in an objective and factual manner, make up our own minds with respect to any action the Senate might want to take on this subject.

**Senator Boudreau:** Honourable senators, as a matter of principle, one can certainly support the position of the honourable senator. The fact is, however, that at this point in time, I am unaware of what might be contained in those documents and whether or not they are matters of national security. I am reluctant to give an undertaking on which I cannot deliver.

**Senator Roche:** Will the minister undertake to deliver to the Senate all information that it is possible for him to obtain on this subject?

**Senator Boudreau:** Honourable senators, I can make that commitment.

CIVIL WAR IN SUDAN—INVOLVEMENT OF  
TALISMAN ENERGY INC.—DISCUSSIONS WITH MINISTER

**Hon. A. Raynell Andreychuk:** Honourable senators, I wish to return to the issue of Sudan. It has been reported that the Minister of Foreign Affairs had prior discussions with Talisman Energy Inc. before they entered Sudan and that he gave advice to Talisman about the situation there. Could the minister tell us what that advice was?

**Hon. J. Bernard Boudreau (Leader of the Government):** Honourable senators, I was not a party to any such discussions. I am unaware of what advice the minister may have given to Talisman, or if, in fact, discussions took place.

ADVICE TO COMPANIES SEEKING TO DO BUSINESS  
IN COUNTRIES WITH HUMAN RIGHTS VIOLATIONS

**Hon. A. Raynell Andreychuk:** Honourable senators, the leader cannot deny it. The minister has indicated publicly that he did give advice to Talisman and that the government knew of the company's intentions to go there. The government would have known the situation in Sudan. It is important to know what advice the Canadian government gives, as a matter of policy, to businesses that enter volatile regions and countries that can act to the detriment of the company. More important, what advice does the government give in the event such actions affect the lives of human beings in those countries? That seems to me the very essence of the debate with regard to Talisman Energy Inc. Would the minister undertake to provide that information?

**Hon. J. Bernard Boudreau (Leader of the Government):** Honourable senators, if the honourable minister has given advice

and has indicated that publicly, then I can only accept that. As to whether or not he is prepared to indicate the nature of that advice, I can simply make a request of him and relay the reply to the honourable senator.

It is important to note, honourable senators, that the government continues to monitor that situation closely and has developed a number of measures in response. One such measure is the opening of an office in Khartoum to monitor more closely the ongoing situation as it develops in that country. In fact, Canada has recently given financial aid to the United Nations to send an envoy to the scene. In April, at the Security Council, there will be an initiative in which Canada will be involved in a central way. In fact, it is hoped that the situation with respect to innocent victims in that country will be alleviated as much as possible.

**Senator Andreychuk:** It has been the government's position, in particular through the Minister of Foreign Affairs, that it is more important to get into peace building and preventive action. It is in that context that I ask my question. People are asking what advice we gave to Talisman. Did they ignore that advice? Was it sufficient advice for Talisman to go in there? Did the Canadian government, in giving that advice, take into account the effect that corporate activity in the country might have on civilians and innocent people? Therefore, I think it is important as a follow-up supplementary question to the specific question of Talisman and Sudan to know also the Canadian government's position.

To the credit of Minister Axworthy, he has been in the forefront of ensuring that analyses are undertaken on different countries so we may know what is going on in them. Information is made available on human rights issues, economic development, and all of the indicators the United Nations development programs use. It would be interesting to know how the government ties in this information with the advice it gives to Canadian corporations when they go to these countries. Are they given this information? Do we give them an indication of what Canada's position is, or are we simply giving them information of a corporate nature?

What conversations, negotiations or admonitions did the Canadian government have or give with respect to China and Malaysia, two other countries that have corporate involvement in Sudan? We talk about quiet diplomacy. Did we use that quiet diplomacy with the actions of the Chinese companies and the Malaysian companies? Many are, in essence, government companies. What advice and what action have we taken with those countries, if we believe in quiet diplomacy?

**Senator Boudreau:** Honourable senators, I certainly will direct the question to the honourable minister. However, I would be surprised if, as he has indicated, those conversations took place and he did not express these views on the wisdom of Talisman's activities in proceeding with their commercial venture there. Rather than speculate, I will ask and perhaps get a specific answer for the honourable senator.

The honourable senator is correct in saying that other companies are involved. As a matter of fact, specifically on the project in which Talisman is involved, I am told that the majority shareholder or partner is a Chinese company. There are other complications and difficulties with respect to any attempts to cease development activity.

I understand what the honourable senator is seeking. I am sure there was no absolute prohibition, neither in Sudan nor in any number of countries where we are not in agreement with the human rights policies of the local government. I am sure that that did not take place. To the extent that advice was given and that I can share it with the honourable senator, I will attempt to get that advice and deliver the information.

• (1500)

## INTERGOVERNMENTAL AFFAIRS

### NOVA SCOTIA—POSSIBILITY OF CAPE BRETON BECOMING A PROVINCE

**Hon. Lowell Murray:** Honourable senators, my question arises from a campaign that has recently resumed and a meeting that was widely publicized over the weekend with a view to promoting provincehood for Cape Breton. What is the position of the federal government with regard to the borders of Nova Scotia? In a word, is Nova Scotia divisible?

**Hon. J. Bernard Boudreau (Leader of the Government):** Honourable senators, as a matter of principle, the question should be clear and the result absolutely without ambiguity. However, I do not think the Government of Canada has yet taken a position with respect to the borders of Cape Breton and the other relevant issues arising out of that question.

## DELAYED ANSWERS TO ORAL QUESTIONS

**Hon. Dan Hays (Deputy Leader of the Government):** Honourable senators, I have a response to a question raised by Senator Robertson on December 7, 1999 regarding the plight of the homeless; a response to a question raised by Senator Di Nino on February 8, 2000 regarding the purchase of Canada Trust by the Toronto-Dominion Bank; a response to a question raised by Senator Kinsella on February 8, 2000 regarding Austria, possible recall of the ambassador in response to the appointment of Joerg Haider in the new government.

**Hon. Noël A. Kinsella (Deputy Leader of the Opposition):** Would the Deputy Leader please read that response?

**Senator Hays:** Certainly.

## FOREIGN AFFAIRS

### AUSTRIA—POSSIBLE RECALL OF AMBASSADOR IN RESPONSE TO APPOINTMENT OF JOERG HAIDER IN NEW GOVERNMENT

*(Response to question raised by Hon. Noël A. Kinsella on February 8, 2000)*

Canada watched, with grave concern, the developments in Austria that led to the coalition between the Freedom

Party and People's Party. Our concern stems from the stated policies of the Freedom Party on human rights; especially the treatment of foreigners, social justice and Austria's role in World War II.

We regret that, even though he holds no office in the new government, the leader of the Freedom Party, Joerg Haider, continues to make disturbing comments. This is despite clear indications, both inside his country and internationally, that his statements are unacceptable.

Canada remains committed to evaluating the new government on the basis of its statements, policies and actions, particularly with regard to human rights, including the treatment of foreigners and minorities in Austria. Our response to the situation in Austria has been measured and directed solely against the new coalition government. We have sought measures that are not aimed at the Austrian people.

As an initial step, Canada has limited its contact with the Austrian government while we continue to evaluate its statements, policies and actions. For the time being, we will not promote ministerial contact between Canada and Austria. In principle, contact between Canada and Austria at the officials level will continue.

## LABOUR

### PLIGHT OF HOMELESS—STATUS OF GOVERNMENT STRATEGY

*(Response to question raised by Hon. Brenda M. Robertson on December 7, 1999)*

Over and over again, all across Canada, community organizations have told the Minister that they do not want the Government of Canada to impose a homelessness strategy. Homelessness differs in communities across Canada and requires a response specific to that community. They want the Government of Canada to partner with them, the private sector and the provincial and municipal governments to develop community-based solutions. The Government of Canada has heard their message loud and clear.

On December 17, 1999, Minister Claudette Bradshaw, on behalf of the Government of Canada announced a \$753-million investment in our communities to work together to address and prevent homelessness. At the heart of the Government of Canada's response is the Supporting Communities Partnership Initiative (SCPI), in which we are investing \$305 million over the next three years.

This initiative will help bring everyone to the table — all levels of government as well as the private and volunteer sectors. Together, we will be able to develop a long-term vision, as well as ensure that our efforts at any level help to create a seamless web of programs and services. We want to give homeless people the best possible chance of moving from the street to a safe and secure life.



The Government of Canada has begun negotiations with the provinces and the initial reactions are very positive. Provinces recognize the importance of helping communities to find solutions to deal with this issue.

Additional funds have also been committed to enhance existing federal programs that have been identified as effective in meeting the needs of the homeless. These enhancements to existing programs are not dependent on negotiations with the province. Funding has already begun to support projects in communities.

The Government of Canada has invested an additional \$268 million to expand the Residential Rehabilitation Assistance Program (RRAP), which will more than double the current budget available for renovations. RRAP has been instrumental in restoring existing shelter spaces and low-cost housing units, as well as building new housing units for low-income individuals throughout the country.

Furthermore, \$170 million will be invested over the next three years to enhance funding to the Urban Aboriginal Strategy, the youth-at-risk component of the Youth Employment Strategy, and the Shelter Enhancement Initiative.

The government will continue to work with our partners to address the short-term needs of homeless people. We will also work together to develop community-based action plans that address the root causes of homelessness and prevent homelessness in the future.

No Canadian should go to bed hungry or without a roof over their head. In partnership with communities, the provincial governments and municipal governments, the federal government is working hard to eliminate homelessness in this country.

## INDUSTRY

### PURCHASE OF CANADA TRUST BY TORONTO-DOMINION BANK—REQUEST FOR FIGURES ON RESULTANT LOSS OF JOBS

*(Response to question raised by Hon. Consiglio Di Nino on February 8, 2000)*

Prior to approving TD's acquisition of Canada Trust, the Government gave its full consideration to a number of public interest concerns, including job losses and the provision of adequate financial services to smaller communities.

TD has indicated that a maximum of 4,900 full-time equivalent positions could be affected over a three-year

integration period. However, it estimated the number of job losses to be 2,900 when allowing for normal staff turnover or attrition. After further analysis, TD is now expecting that this number could be lower than projected.

TD has publicly committed to employment adjustment measures for affected employees that are fair and generous, and has also assured customers that it would be adopting the popular Canada Trust service model.

In addition, TD has stated that the integration of the TD and Canada Trust branch networks will only begin one year after the approval date of the acquisition. However, given the fact that CT is primarily an urban operation, the impact of the acquisition on smaller communities is expected to be minimal.

Moreover, TD has indicated that it will respect legislative requirements. These will include the policy on branch closure notification outlined in the new policy framework that was announced in June 1999. This policy requires banks to provide four months' notice of closures and six months' notice in the case of closures in smaller, rural communities with no other financial institution within a 10-kilometre radius of the branch being closed.

## BUSINESS OF THE SENATE

### POINT OF ORDER

**Hon. Nicholas W. Taylor:** Honourable senators, *Beauchesne's Parliamentary Rules & Forms*, 6th edition, at paragraph 415 on page 123, says:

A question of privilege or point of order raised during the Question Period ought to be taken up after the Question Period...

I point that out not to try to inform my house leader, because I know he is very well informed, but simply to point out that Beauchesne's requires that practice.

Rather, I raise that point because my friend across the way, Senator Angus, who is usually very good at putting his questions, infringed upon good order and parliamentary procedure not once but twice during Question Period today. Perhaps the kindest thing I can say is that he did not read well enough what his researcher prepared for him. He is known to be competent, gentlemanly, and to the point.

However, he used the word "misleading". He said that a person in the other place had misled the House. "Misleading" is unparliamentary according to Beauchesne's. Article 489 states that since 1958 the term "deliberately misled" has been ruled to be unparliamentary.

Honourable senators, I had the opportunity to read what will become Hansard as it was provided through computer assisted realtime to Senator Gauthier by a member of the Debates staff. Senator Angus said that the minister was caught with her hands in the cookie jar. That is very unparliamentary and I would expect that he would apologize for it. I know he has the ability to describe unwarranted use of public monies in much more scientific and polite ways than that.

To say that the minister was caught with her hands in the cookie jar is to accuse a parliamentary colleague, admittedly in the other place which is not usually up to our standards, of stealing something; in this case public money.

I would ask that the honourable senator to withdraw those comments, and perhaps the next time he poses a question, he will have his assistant look at Beauchesne's. I am certain that with all of his ability and charm, he will not stoop to the gutter type language used in this case.

**Hon. W. David Angus:** Honourable senators, with so many smart cookies on the other side of the house I am surprised at how easy it was to touch a sensitive nerve, as we did today. I can only say that my words were the mildest phraseology I could think of to describe this scandalous and sordid mismanagement of public funds.

**Senator Taylor:** Honourable senators, he has been out in the sun too much.

**Hon. Marie-P. Poulin (The Hon. the Acting Speaker):** Honourable senators, the Speaker will take the point of order under advisement.

[Earlier]

## CRIMINAL CODE

### BILL TO AMEND—NOTICE OF MOTION TO REINSTATE TO ORDER PAPER

Leaving having been given to revert to Notices of Motions:

**Hon. Raymond J. Perrault:** Honourable senators, I give notice that tomorrow, Wednesday, February 23, I will move:

That notwithstanding Rule 27(3), the Order of the Day for the second reading motion of Bill S-11, An Act to amend the Criminal Code to prohibit coercion in medical procedures that offend a person's religion or belief that human life is inviolable, a public bill, be now restored to the *Order Paper*, for the purpose of reviving the Bill.

[Translation]

## ORDERS OF THE DAY

### ROYAL ASSENT BILL

#### SECOND READING

On the Order:

Resuming debate on the motion of the Honourable Senator Lynch-Staunton, seconded by the Honourable Senator Kinsella, for the second reading of Bill S-7, An Act respecting the declaration of Royal Assent by the Governor General in the Queen's name to bills passed by the Houses of Parliament.—(*Honourable Senator Prud'homme*).

**Hon. Marcel Prud'homme:** Honourable senators, I followed the debate on Bill S-7, respecting the declaration of Royal Assent. One of the difficulties confronting the Senate is that people are not listening. The debate is underway, but the decision has already been made. During certain debates, I enjoy listening to the objections and arguments put forth by both sides and come to an enlightened and well researched opinion.

Bill S-7 reflects an often expressed wish by Senator Lynch-Staunton, a friend for whom I have a great deal of respect.

• (1510)

I came to the conclusion that there is a danger. Senator Cools, with her typical drive, her extraordinary gift for research and her hard work, delivered a remarkable speech on the traditions that shaped the Canadian parliamentary system. I did not go as far as she did in my research. We learn a lot by listening to her speeches and rereading them.

Again, I am a traditionalist when it comes to constitutional or regulatory changes, whether in the House of Commons or in the Senate. I want to say, in response to Senator Lynch-Staunton's speech and to Senator Cools' reply and amendment, that I had the impression that two things were being discussed.

Senator Lynch-Staunton wants to change the way Royal Assent is declared. I ask the honourable senator to correct me if I am mistaken. I have no objection in being corrected if I am wrong. It is stupid and somewhat arrogant to believe that we always hold the key to the truth. I believe that, for the Leader of the Opposition, the issue is a change to be made to the ceremony.

I pay tribute to Senator Cools' remarkable work. I would suggest university students read the speech that came out of this research. She always knows so well how to go about studying questions that are not often of national or international interest, but that should be of interest to parliamentarians.

I would, regrettably, vote against any change to the ceremony of Royal Assent, if a vote were held on the issue. What I call fragmentary changes dramatically change our institutions and cause an ever greater rift between the two Houses.



I sat in the House of Commons from 1964 to 1993. I look at the first row of desks on the government side and see a number of people who have sat in the other House, from Senator Joyal to Senator Gauthier. This is also the case in the front row of the opposition. In my little corner, I do not ever consider myself to be of one side or the other.

Senator Corbin made a speech last week, which moves me to make another. I note that Senator Maheu and Senator Gustafson, among others, are present. Increasingly, we are heading toward a rift between the two Houses.

[English]

It is a kind of slow-but-sure cut between the two chambers. What, then, is the real problem? How can we come to a harmonious conclusion without hurting anyone's feelings?

It is in the process, I believe, that we may be wrong. Royal Assent is given at a moment's notice, often late on a Thursday when some senators want to fly to Western Canada or to Eastern Canada. Canadians must understand that, for us in Montreal or Toronto, it is easy to return to our ridings but senators who live far away — and I am looking at Senator Cohen, Senator Spivak and others — have to make travel arrangements. The Senate usually adjourns for the week on Thursday evenings, but often, shortly before it does, notice of Royal Assent is given and Royal Assent follows.

It is depressing, and I regret it, but, admittedly, few senators on either side attend the Royal Assent ceremony. Members of the other chamber seems to follow our lead and they, too, do not attend the Senate chamber for Royal Assent. It would do no harm to remind the House of Commons that other institutions make up Parliament. There is the Crown, the House of Commons, and the Senate. Until Canadians decide otherwise, that is the way it is, and that is the way it should remain.

I grant that Senator Lynch-Staunton may not be attacking this issue head-on. I would hope that other senators will join in the debate so that we know whether they agree with any proposals that are made. I will make one myself.

Senator Lynch-Staunton wants the Royal Assent ceremony to be done differently. As a supporter of the British parliamentary tradition, I would much prefer that we have more discipline in the way Royal Assent is given in this house. It should never be at a moment's notice, when many senators have other plans. It should be pre-announced. The ceremony should take place on a Tuesday or a Wednesday, at a fixed hour. I also believe that the government should adopt a certain discipline. It should remain a major ceremony.

Soon, major bills will come to the Senate from the House of Commons, and I hope that the Senate, as a chamber of reflection,

and as the protector of minorities and regions will have ample time and opportunity to study those bills. Our duty is to decide whether to propose amendments. If we decide to amend a bill, it must be returned to the House of Commons. If we do not propose any amendments then, after third reading, the bill is given Royal Assent. Royal Assent should be treated and respected as an important ceremony, and the children of Canada should hear about it.

We are sometimes told we should be more active. I will brag and say I am. Recently I attended a major event with university students from Laval, Montreal and Hull who were all separatists. I sometimes wonder if it is appropriate to accept some invitations which are extended to me. In any event, I attended that particular event, and after one day they were asking me to join a political party or create a new one that was not the Bloc Québécois or the Péquistes.

• (1520)

My determination is to keep tradition. I am extremely hesitant to move away from tradition. There are people at the moment who would like another tradition. They think it is silly that Supreme Court justices should be dressed in a great manner when they render their judgments. Some young lawyers believe they should be allowed to go to the Supreme Court dressed in jeans. When one thinks about it, one wonders why not? However, when one really thinks about it, one concludes that it should not take place. Dress can be a mark of respect in a society, which seems to be desirous — until there is a debate — of doing away with everything that seems to be superfluous. It is not that way for me.

Honourable senators, I have a suggestion. I do not like to be negative, so I try always to come up with a suggestion, even if it is unbelievable, unacceptable or extravagant. I suggest we start, in cooperation with the house leader and the official leader of the opposition, to test another way to have Royal Assent in this chamber. If this does not work, it is never too late to come back to the desire of Senator Lynch-Staunton and look again at his proposal. I do not think we have taken enough time to reflect.

[Translation]

We have not given enough thought to protecting this system where each — the Queen or her representative, the House of Commons and the Senate — have a duty to perform during the Royal Assent ceremony.

It is a way of explaining our parliamentary system to students in our universities, colleges or small schools, who are very clear about the concept of discipline.

I do not like it when the Royal Assent ceremony is conducted in a perfunctory way. However, this is the direction in which we would slowly be heading if we adopted such changes. I have been through this in the House of Commons.

[English]

I was chairman of the members' services committee. There are many services for parliamentarians that they do not even know about. Then someone arrived and said that, in the name of change, we must change all the services. They invented a monstrous committee, which now has problems. Hence, they will eventually revert to the old members' services committee, which worked quietly and gently on Wednesday afternoons to look after the business that affected the daily lives of members of the House of Commons.

I am afraid that once we cut the tradition, it is finished. It can hardly come back. Therefore, before proceeding with what I consider the ultimate change, we should put our heads together and see if we cannot do things differently.

**Hon. Anne C. Cools:** Honourable senators, perhaps Senator Prud'homme could tolerate a question or two.

**Senator Prud'homme:** Of course.

**The Hon. the Acting Speaker:** Senator Prud'homme's time for speaking has expired. Is leave granted, honourable senators, to extend the time?

**Hon. Senators:** Agreed.

**Senator Cools:** Honourable senators, I wish to thank Senator Prud'homme for a number of questions, one of which obviously is his kindness to me in his remarks, but the essential essence or substance of his comments seems to turn on the question of traditionalist activities. I describe myself as supporting traditionalism, but there is another central point here which is also a legalist phenomenon. I would also submit what I would describe as a parliamentary phenomenon.

Senator Prud'homme knows that I feel strongly about my personal Afro-Saxon heritage and culture. To come to the heart of the matter, the real question here is what we call the *lex parliamenti*, or the law of parliament. It is the duty of parliamentarians to uphold the privileges and the law of parliament.

I contended in my speech, to which Senator Prud'homme referred, that the law of parliament — which is a body of law — upholds the principle that prior to consideration of bills affecting Her Majesty's interest, the Royal Prerogative — that is, Her Majesty's Royal Assent — should be obtained. I had urged that in the instance of a government initiative, obviously government ministers have ready access to Her Majesty's prerogative; but in the instance of backbenchers, I had suggested or urged that the backbencher — in this instance, Senator Lynch-Staunton — consider the possibility of moving a motion on the floor of the chamber for an address to Her Majesty seeking that consent.

The authorities seem to indicate that there are two ways to get Her Majesty's consent. One is through a government minister, a minister of the Crown. The other is an address to the Crown.

It is very interesting — and I wondered if, in Senator Prud'homme's research, he had encountered this — that all of the individuals who advocate, propose and urge the need to make this change in the Royal Assent all indicate that it was changed in England in 1967.

On March 2, 1967, when the most recent changes to Royal Assent were accomplished by bill, the Lord Chancellor himself stood and indicated to the lords that the government had obtained Her Majesty's agreement. The exact words I will put forth for your consideration. Lord Gardiner said:

• (1530)

My Lords, I have it in command from Her Majesty the Queen to acquaint the House that Her Majesty, having been informed of the purport of the Royal Assent Bill, has consented to place Her prerogative and interest, so far as they are affected by the Bill, at the disposal of Parliament for the purposes of the Bill.

Weeks later, on April 17, 1967, in the House of Commons, Attorney General Sir Elwyn Jones made a similar statement. He said:

I have it in Command from the Queen to acquaint the House that Her Majesty, having been informed of the purport of the Bill, has consented to place Her prerogative and interest, so far as they are affected by the Bill, at the disposal of Parliament for the purposes of the Bill.

**The Hon. the Acting Speaker:** Senator Cools, you have been granted permission to ask a question.

**Senator Cools:** That is what I am doing.

**The Hon. the Acting Speaker:** Would you ask the question, please?

**Senator Cools:** Honourable senators, I am absolutely in order, and if anyone has an objection to what I am saying, they must rise on their feet and raise a point of order on what I am saying.

**Senator Lynch-Staunton:** Honourable senators —

**Senator Cools:** I am sorry, Senator Lynch-Staunton, but you did this before. The exchange on this matter is between Senator Prud'homme and myself. If Senator Lynch-Staunton is not objecting to the nature, kind and quality of my question, I think he should contain himself.

I should like the Honourable Senator Prud'homme to respond to my question. The question was: Is a similar procedure necessary here?

Come now, honourable senators, this is pretty transparent. Surely honourable senators can do better than that.



**Hon. John G. Bryden:** Honourable senators, I stepped out for a few minutes and have only been back in the chamber for the last 15 minutes. I wonder if the honourable senator could repeat her question.

**Senator Cools:** Thank you so much. With leave, I would be more than happy to repeat my question.

Honourable senators, what I had been putting to Senator Prud'homme was the essential substance of what I had raised earlier. I was asking the question of whether his research and his study of the matter revealed the fact that in England, when the Royal Assent bill was passed in 1967, both in the House of Lords and the House of Commons, the Lord Chancellor and the Attorney General rose —

**The Hon. the Acting Speaker:** Thank you, Senator Cools.

**Senator Cools:** I am eagerly anticipating Senator Prud'homme's response.

**Senator Prud'homme:** Honourable senators, first, I thank Senator Bryden for having asked that the question be repeated. When answering a question put by Senator Cools, it is always good to have a bit more time to reflect and prepare oneself intelligently.

Second, I should like to say to Senator Cools that it was not my intention to be nice. I always want to pay homage to hard-working senators. The honourable senator happens to be among those whom I recognize as talented and hard-working. I always come away from a debate with her a little richer. Hence, my comment was not made in an effort to be nice and complimentary; it was made to acknowledge that I agree with her.

Honourable senators, even if I were in the minority, I would still stand up for senators I recognize as hard-working. I am not pointing to Senator Lynch-Staunton, who is as equally hard-working as his neighbour, but some of the interruptions I could do without. I could do without the impatience when someone is a hard-working person. Honourable senators, the points that have been raised must be taken into account. There is no doubt in my mind about that. The debate goes back a long time. I have been through some difficult family problems recently and therefore had to read that debate. I had the material sent to me when I was absent. I read what the honourable senator said, as well as the other recommendations. I have only just finished reading 250 pages of the report on the reform of the House of Lords. I suggest honourable senators read that as well. They propose the creation of a Senate that will look something like the Senate of Canada. The report can be obtained for free on the Internet.

Having said that, Senator Cools, I wish to avoid saying that you are totally right and therefore Senator Lynch-Staunton is totally wrong. I did not wish to be in agreement with Senator

Lynch-Staunton, who wants to do away with the tradition, and not answer Senator Cools' question. That is why I came up with the idea of doing Royal Assent in a different manner. Royal Assent has always been done at a moment's notice. I know some ministers are bothered by that and that they do not like to come to the Senate, which I regret.

Honourable senators, as long as my country has existed, it has been very well organized. We have the Queen, and I, as a member of the Queen's Privy Council, say that as long as Her Majesty Queen Elizabeth II lives, "Long live the Queen." I am not sure I could be relied upon to say the same thing if she were to pass away or resign voluntarily.

Honourable senators, I believe in evolution. Canada is known around the world as a country that changes through evolution, not revolution. However, evolution does not mean we should get rid of all of our traditions. I consider one of our traditions to be Royal Assent. We have never abandoned the idea of doing Royal Assent in a different way so that we could accommodate honourable senators, whose first idea when they presented Bill S-7 was to possibly make Royal Assent more efficient. In the name of efficiency, we are killing something which exists. I am attached to Royal Assent and always make a point of coming to this chamber for Royal Assent.

One of our top historians and one of our most intelligent minds, former senator John Stewart, told me time and time again that if senators had put their heads together, we could have declared the GST law unconstitutional due to the way in which Royal Assent was given. Royal Assent demands that there be a ceremony involving the two houses. That ceremony did not take place.

Honourable senators, I was there as a member of the House of Commons. I do not know how I voted on the bill, but I probably voted with the opposition.

**Senator Cools:** I do not think the Honourable Senator Prud'homme was a member of the Senate during the GST debate.

**Senator Prud'homme:** I know one thing: the way Royal Assent was given was not the way tradition has always dictated. I am raising that as a question. There was a long discussion between Senator Stewart — a scholar in these matters — and myself. I did not raise the matter.

Honourable senators may not know that the next time the new Governor General comes to the Senate, or one of her representatives, we could make a special appeal.

Honourable senators, this is a very serious matter. The Deputy Leader of the Government will always remain my friend, but if I must, I will do that. When we talked about independent senators some years ago, I interrupted the then Governor General when he was making a major speech. I did not do so this year because I probably made an error in interpreting the offer regarding the role of independent senators. That has not materialized.

Honourable senators, one senator could have embarrassed you again this year. I could have interrupted the Governor General again this year when you asked for the creation of the committee. I could have expressed my dissent, and we would have had to debate the issue. I do not care where I sit and whether or not I have access to a microphone because I can speak loud enough so that people can hear me. I did not do that because I was given an assurance, but I misunderstood that assurance. This could happen again. If the two Houses work together, this situation will never arise.

• (1540)

We could make a last call before Her Excellency or her representative and say, "I beg you to do this." I will ask Senator Cools to do all the research on this matter. If she declines, I will ask her to refer me to the appropriate sources. I will read them all. I know that Senator Cools will tell me whether or not I am correct.

Honourable senators, the Senate is a chamber of reflection and one where we exchange views. We should not have preconceived ideas. We should not declare that we are for or against a certain proposal until we have had that exchange of views. I will most likely try the system once more, either before I depart or before I die — that is, if I do not leave here before I reach age 75. I will make one last appeal. There are precedents where you could humbly throw yourself at the feet of whomever is to give Royal Assent and say, "Please, before you give assent to this piece of legislation, I beg of you to hear me out."

I have had many discussions with very old seniors who have taught me how to do this. However, I have not had an occasion to do that. That is why I say, "Let us modernize." You never know what will happen when the House of Commons stampedes the system, and the two vast majorities in this chamber go hand in hand. The only option left to us may be to throw ourselves at the feet of whomever is giving Royal Assent and ask, "Would you kindly suspend your Royal Assent until we can reflect on this issue?" You never know what might happen.

I leave that with you for your reflection.

I thank the Honourable Senator Lynch-Staunton for having launched the debate concerning modernizing this institution. However, I wonder if it can be done as a test case. If it does not work, we will have to find other ways to do it.

**Hon. Dan Hays (Deputy Leader of the Government):** Honourable senators, I should like to address this bill not on its merits but, rather, on the process, that is, where we are on the order paper, and what the disposition of this bill should be.

This bill has been the beneficiary of several excellent speeches, including those today and the exchange between

Senator Prud'homme and Senator Cools. Perhaps in concluding the debate the mover of the bill would wish to answer some of the issues on the merits. For my part, I would hope that we can deal with this motion today.

A number of questions arise here. There is the issue of the merit of the bill, that is, the proposal contained in Bill S-7. Senator Prud'homme has told us that he does not know everything that he would like to know about the bill. He also referred to proposing another kind of Royal Assent. He referred to accommodating some differences. The merits of the bill — that is, the changes that the bill proposes to the Royal Assent ceremony and procedure — are matters with which the committee to which this bill would be referred, if it is given second reading, can properly deal. The questions raised by Senator Prud'homme and others can be considered in committee.

Another matter is of concern, however, honourable senators, and that is the issue regarding the Royal Prerogative. Some senators hold the view that Bill S-7 in no way alters, affects or limits the Royal Prerogative respecting Royal Assent. However, some senators believe that it does affect or limit the Royal Prerogative, in which case the Royal Consent would be required. Ideally, that question should be dealt with by our committee.

If the committee agrees that this question requires an answer, the committee can call witnesses who have constitutional and procedural expertise. That is the appropriate forum for that kind of debate. My understanding is that, if this bill is given second reading, it will be referred to the Standing Committee on Privileges, Standing Rules and Orders, a committee well suited to deliberating on and answering that question, and reporting back to the Senate.

Honourable senators, as a general comment on second reading, which is often referred to as "approval in principle", our colleague Senator Stewart has been referred to today, in speeches and on other occasions. I should like to join with those drawing on his wisdom and quote from his book entitled, *The Canadian House of Commons, 1977*, where he states at page 84:

The second-reading motion is a procedural motion... What must be remembered is that the legislative process is indeed a process. The House does not commit itself conclusively in favour of a bill at any stage before the final one, when it votes to let the bill pass from the House —

— or not pass from the House.

Therefore, the reference of Bill S-7 to a committee following second reading does not mean that that committee cannot return the bill to the House saying that it should not be proceeded with further, for whatever reason. There are ample precedents for that, but I will not list them. That is one of the options. The committee could determine that the Royal Prerogative is involved and that the Royal Consent is required. The authorities are clear that the Royal Consent can be obtained at any stage. In fact, the most common procedure would be for that to be dealt with in the House of Commons.



Honourable senators, I do not wish to prolong this debate, but I did want to place my comments on the record regarding not so much the substance of the bill but, rather, what the Senate should do by way of procedure. I would hope that the Senate would see merit in giving second reading to the bill and referring it to the appropriate committee of the Senate, which would be the Privileges, Standing Rules and Orders Committee.

**The Hon. the Acting Speaker:** Honourable senators, I wish to inform the Senate that if the Honourable Senator Lynch-Staunton speaks now, his speech will have the effect of closing the debate on the motion for second reading of this bill.

**Hon. John Lynch-Staunton (Leader of the Opposition):** Honourable senators, I am most appreciative and even surprised at the interest that this bill has received, and very impressed with the level of the debate, no matter the views on it. It was most educational, instructive and very helpful.

Whether or not one supports the bill, there is a general agreement that the Royal Assent ceremony as presently carried out does not do justice to its significance. I believe we are all in agreement on that.

Senator Corbin, for instance, mentioned last week that when he was in the House of Commons — and, I am sure Senator Prud'homme remembered that — Madam Sauvé and Speaker Lamoureux would attend every Royal Assent ceremony. A certain prestige was added to the ceremony by the attendance of those key figures.

• (1550)

We must remind ourselves that more often than not we receive a delegate from the Governor General who is not the Chief Justice. On occasion, we receive a Deputy Speaker who is accompanied by no members of the House of Commons but only officials. More often than not, this chamber has had quite a few empty seats on the day Royal Assent is given, which leads me to conclude that it is something which is not as attractive to senators as proceedings on another day would be and which would allow them to be in attendance in larger numbers.

This bill recognizes that situation and suggests a way to at least cut down on the number of ceremonies, which are routine, mundane, and certainly not in the least significant, even less thought provoking, as a Royal Assent should be. If this bill only provokes a debate on the role of Royal Assent in the legislative process, then it will have been more than worthwhile. If, at committee stage, recommendations are adopted to enhance Royal Assent by means other than those suggested in this bill, I will be the first one to support those recommendations.

I believe this bill offers an adequate solution to the present situation confronting the traditional ceremony of Royal Assent. If we can find a way to obligate the Governor General's office, the Speaker of the House of Commons, members of the other place and senators to be here in larger numbers on days known well ahead of time and give the Royal Assent feature of the legislative process the dignity and the importance that it deserves, then I shall be the first to drop these proposals and adopt that one. Meanwhile, unless we bite the bullet on this one, I fear that we are in for another few months, if not years, of the scruffy procedure that we are faced with from time to time.

This bill is intended to serve such a purpose, that is, to stimulate debate and to come up with solutions other than the one proposed in the bill, if so desired. I have no doubt that if the interest shown in and support given to Royal Assent are continued at committee, as suggested by Senator Hays, we can vastly improve how the last stage of a bill is played out.

I can assure honourable senators that supporting the bill at this stage is supporting the principle of the bill which is that Royal Assent be retained. The purpose of the bill is to improve on the ceremony, either through passage of the bill or by some other method, which I am sure the Rules Committee will be able to find.

**Senator Prud'homme:** Honourable senators, would the honourable senator allow one question?

**Senator Lynch-Staunton:** Of course.

**Senator Prud'homme:** Honourable senators, the last few minutes of the honourable senator's speech made me change my mind as to how to vote. I am a democrat. I believe in the free flow of information and in study. If I have understood the honourable senator clearly, he said that referring this bill to committee now does not mean that we are necessarily in favour of the bill. If that is the case, then I am more than prepared to vote in favour of sending the bill to committee for further study, if that is the wish of the Senate.

**Senator Cools:** Honourable senators, I rise on a point of order.

The question has not been put on second reading, yet, it seems to me the Honourable Senator Prud'homme is speaking to the question of referring the bill to committee.

**Senator Hays:** Honourable senators, Senator Cools is correct. Fortunately for Senator Prud'homme, the question has not been put. Senator Prud'homme, therefore, now has the opportunity to put his question, which he has already done. Senator Lynch-Staunton now has an opportunity to answer it, as well as any other questions. Following that, I am sure Her Honour will put the question.

**Senator Lynch-Staunton:** Honourable senators, I said that, if there were no more intervenors, I would be willing to move at the appropriate time that this bill be referred to the Rules Committee. Obviously, it must be understood that we have to move second reading first.

[Translation]

I will say to Senator Prud'homme that, contrary to what some have said, this bill in no way seeks to abolish Royal Assent. Its purpose is simply to change the manner in which it is exercised. The principle of Royal Assent stands, but the ceremony would be performed differently. During consideration by the committee, if other senators can come up with other approaches, I will be the first to encourage them.

**The Hon. the Acting Speaker:** If no one else wishes to speak, I remind honourable senators that it was moved by the Honourable Senator Lynch-Staunton, seconded by the Honourable Senator Kinsella, that the bill be read the second time. Is it your pleasure, honourable senators, to adopt the motion?

**Some Hon. Senators:** Yes.

**Some Hon. Senators:** No.

Motion agreed to, on division, and bill read second time.

REFERRED TO COMMITTEE

**The Hon. the Acting Speaker:** Honourable senators, when shall this bill be read the third time?

On motion of Senator Lynch-Staunton, bill referred to the Standing Senate Committee on Privileges, Standing Rules and Orders.

[English]

## IMMIGRATION ACT

BILL TO AMEND—SECOND READING—DEBATE ADJOURNED

On the Order:

Resuming debate on the motion of the Honourable Senator Ghitter, seconded by the Honourable Senator Cohen, for the second reading of Bill S-8, to amend the Immigration Act.—(*Honourable Senator Wilson*).

**Hon. Lois M. Wilson:** Honourable senators, I rise to speak to Bill S-8, a private member's bill tabled by Senator Ghitter on November 7, which seeks to re-enact previous legislation to allow the Minister for Citizenship and Immigration to divert the boats carrying so-called illegal immigrants back from Canadian waters. It appears to be a painless and simple solution to a difficult problem.

In essence, the bill is enabling legislation giving discretionary decision-making power to the Minister for Citizenship and Immigration to turn back any vehicle within 12 nautical miles of the territorial sea or the internal waters of Canada, if "the Minister believes on reasonable grounds" that the vehicle is bringing any person into Canada in contravention of this act or regulations. In other words, the bill is to stem the flow of what some believe to be the continuing arrival of boatloads of illegal

immigrants or non-bona fide refugees. That, indeed, is my first difficulty with this bill. The use of the word "may", which allows ministerial discretion, means possible inconsistency of treatment of people before the law. It does not guarantee equal treatment of all people, although we like to think of that as a fundamental right. Such discretion may appear to be adequate under a benign and wise minister of the government, but still begs the question of equal treatment before the law.

On Thursday, February 17, Senator Grafstein filled in the background and history of the bill, as well as the previous measures Immigration Minister Caplan is proposing to stop the trafficking. I will not reiterate the points so ably made in his intervention, but simply say that I support Minister Caplan's proposals and think those initiatives are a more creative way of dealing with a very tough problem than turning back the boats to the high seas.

Bill S-8 has incorporated much of the current thinking from refugee law debates. My second difficulty is that the proposals contained in the bill do not seem to take into account the international treaty rights that are at issue because of Canada's international obligations outlined in the Convention Against Torture, for example, or in the Organization of American States human rights systems. These are the life, liberty and security of the person; freedom of movement; related due process; and non-discrimination based on the means of transport. Related rights that could be at issue are protection from torture or cruel treatment; and family rights with related due process.

• (1600)

Ms Mary Robinson, the United Nations High Commissioner for Human Rights, has spoken out to governments in favour of protecting potential victims. She spoke to the committee preparing an international convention against transnational organized crime at a Vienna meeting on July 7, 1999. At that meeting she said that any instrument dealing with transnational organized crime must commit itself to preserving and protecting the fundamental rights to which all persons, including illegal migrants, are entitled. Ms Robinson emphasized that international obligations to human rights must be at the core of any credible anti-trafficking strategy.

At that meeting in Vienna, Ms Robinson went on to say:

Hundreds of thousands of destitute individuals are knowingly entrusting their lives and fortunes to unscrupulous profiteers. As borders are tightened around the world, organized criminal networks provide the only chance for many people in their search for security and a better life. It is right to target these networks. It is also right to continue our fight against the corruption, which allows them to flourish. However, in our efforts to eliminate illegal migration we cannot forget that all persons, irrespective of their status, have rights in law, which must be protected. The two goals are not irreconcilable: attacking and dismantling the organized criminal networks that are engaged in illicit movement of people for profits; and the protection of the legal rights of victims of this sad trade.



It is not only the UN treaties to which Canada is signatory that are relevant. It behooves us also to pay attention to the Inter-American Commission on Human Rights of the Organization of American States, which Canada joined in the early 1990s. Although the commission does not yet have legal force, it does recognize and pronounce on individual complaints of violations of human rights, as it did in March 1997 in regard to the Haitian boat people who had been returned to Haiti despite fear of persecution upon return.

The third difficulty I have with the bill is that it proposes unilateral action only. Trafficking and irregular migration are among the most pressing problems currently facing the international community. Neither of these problems can be effectively addressed by one state or even by a group of countries. They are transnational both in scope and effect. I have watched the efforts of various Western governments to find a simple and international legal way of avoiding hearing the claimant by passing the problem to another country. To my mind, nothing short of an impartial and independent hearing on refugee status can settle the issue in concert with an international convention against transnational organized crime such as is being prepared at the UN.

The last and fourth difficulty I have is that genuine mistakes can be made and authentic refugees may well be turned away without a fair hearing and their fate sealed because of unwarranted and untested assumptions about their motives and claims. The group may well include those with genuine claims to refugee status. I urge Canada to ensure that the principle of non-refoulement of asylum seekers is preserved and underlined in any proposed bill.

It is my hope that the appropriate Senate committee will look carefully at the serious implications of this bill and will invite witnesses from the Inter-American Commission of Human Rights to provide evidence. That commission has authority to interpret treaties in this region of the world and is well-situated to do so because it conducted a site visit to Canada in October 1997. A report on that visit is anticipated imminently. We would be prudent to avail ourselves of their wisdom.

On motion of Senator DeWare, debate adjourned.

## PUBLIC SERVICE WHISTLE-BLOWING BILL

### SECOND READING

On the Order:

Resuming debate on the motion of the Honourable Senator Kinsella, seconded by the Honourable Senator DeWare, for the second reading of Bill S-13, to assist in the prevention of wrongdoing in the Public Service by establishing a framework for education on ethical practices in the workplace, for dealing with allegations of wrongdoing and for protecting whistle-blowers.—

*(Honourable Senator Lynch-Staunton).*

**The Hon. the Acting Speaker:** Honourable senators, if the Honourable Senator Kinsella speaks now, his speech will have the effect of closing the debate on the motion for second reading of this bill.

**Hon. Noël A. Kinsella (Deputy Leader of the Opposition):** Honourable senators, I wish to make a few comments on Bill S-13. We had an excellent analysis presented to us by our colleague Senator Finestone. This bill has also captured the interests of a broad cross-section of people. Many are interested in not only the machinery of government but our public service and the kinds of modern challenges presented to public servants, who are committed to working in an environment that is marked by the highest ethical standards. Because of the conflicting issues that are so often presented to the modern day public servant, the time has come for us to identify the appropriate vehicle for dealing with this issue of so-called whistle-blowing.

If adopted by the Senate now, the National Finance Committee, which generally has the mandate to look at these kinds of things and other matters that affect the public service, may make a very positive contribution to this new area that is of importance to all Canadians.

Motion agreed to and bill read second time.

REFERRED TO COMMITTEE

**The Hon. the Acting Speaker:** Honourable senators, when shall this bill be read the third time?

On motion of Senator Kinsella, bill referred to the Standing Senate Committee on National Finance.

## PARLIAMENT OF CANADA ACT

### BILL TO AMEND—SECOND READING

On the Order:

Resuming debate on the motion of the Honourable Senator Grafstein, seconded by the Honourable Senator Callbeck, for the second reading of Bill S-5, to amend the Parliament of Canada Act (Parliamentary Poet Laureate).—*(Honourable Senator Lynch-Staunton).*

**Hon. Dan Hays (Deputy Leader of the Government):** Honourable senators, Senator Grafstein is unavoidably away from the chamber. He has asked me to move second reading of Bill S-5.

**The Hon. the Acting Speaker:** Honourable senators, is it your pleasure to adopt to motion?

**Hon. Senators:** Agreed.

**Hon. Marcel Prud'homme:** On division.

Motion agreed to and bill read second time, on division.

## REFERRED TO COMMITTEE

**The Hon. the Acting Speaker:** Honourable senators, when shall this bill be read the third time?

On motion of Senator Hays, for Senator Grafstein, bill referred to the Standing Senate Committee on Social Affairs, Science and Technology.

## CRIMINAL CODE

## BILL TO AMEND—SECOND READING

On the Order:

Resuming debate on the motion of the Honourable Senator Moore, seconded by the Honourable Senator Poulin, for the second reading of Bill C-202, to amend the Criminal Code (flight).—(*Honourable Senator Kinsella*).

**Hon. Noël A. Kinsella (Deputy Leader of the Opposition):** Honourable senators, Bill C-202, to amend the Criminal Code with respect to persons fleeing in a motor vehicle whilst being pursued by a peace officer, is a very important bill. It addresses the problem of the many injuries and sometimes tragic fatalities associated with high-speed police chases.

• (1610)

This measure attempts to address that and, in principle, we support such an initiative. However, the bill has an error in it. On page 2 of the bill, in clause 3, subclause (5) states:

For greater certainty, where a court charges an offence under section 220, 221 or 236 —

The courts do not “charge” anything under our system. That word obviously is incorrect. If you read the French, it states:

[*Translation*]

Lorsqu'un chef d'accusation vise une infraction prévue aux articles 220...

[*English*]

It is clear that that word “court” probably ought to have been the word “count”. I draw that to the attention of the chamber. Senator Milne’s committee, to which I suspect the bill is being referred, might want to take note of that and see that it is corrected.

**The Hon. the Acting Speaker:** Is it your pleasure, honourable senators, to adopt the motion?

**Hon. Senators:** Agreed.

Motion agreed to and bill read second time.

## REFERRED TO COMMITTEE

**The Hon. the Acting Speaker:** Honourable senators, when shall this bill be read the third time?

On motion of Senator Moore, bill referred to the Standing Senate Committee on Legal and Constitutional Affairs.

CRIMINAL CODE  
CORRECTIONS AND CONDITIONAL RELEASE ACT

## BILL TO AMEND—SECOND READING—ORDER STANDS

On the Order:

Resuming debate on the motion of the Honourable Senator Cools, seconded by the Honourable Senator Watt, for the second reading of Bill C-247, to amend the Criminal Code and the Corrections and Conditional Release Act (cumulative sentences).—(*Honourable Senator Di Nino*).

**Hon. Marcel Prud'homme:** Honourable senators, may I ask a question? We have now moved the bill of Senator Lynch-Staunton forward. I am very happy that we are moving all these bills along. Suddenly, we arrive at this bill, which I should like to see go to committee for further study, and I understand the matter is to be stood. There is a great interest in this bill. We may agree or not; I repeat the argument I made earlier. However, is it not possible to send this bill to committee today?

**Hon. Noël A. Kinsella (Deputy Leader of the Opposition):** Honourable senators, debate on this item is adjourned in the name of the Honourable Senator Di Nino, and he asked me, knowing that he would not be in the chamber at this time this afternoon, if I would stand the debate or move the adjournment. I believe he intends to speak to this bill tomorrow, or, if not tomorrow, very shortly.

**Hon. Dan Hays (Deputy Leader of the Government):** I might add, honourable senators, that at least one senator on this side of the house wishes to speak after Senator Di Nino, and perhaps more than one.

**Senator Kinsella:** Honourable senators, I remind everyone once again that even though an item stands adjourned in the name of an honourable senator, that does not prevent other honourable senators from rising and speaking on the matter.

Order stands.

## INTER-PARLIAMENTARY UNION

REPORT OF CANADIAN GROUP ON  
102ND INTER-PARLIAMENTARY CONFERENCE HELD IN  
BERLIN, GERMANY—INQUIRY—DEBATE ADJOURNED

**Hon. Sheila Finestone** rose pursuant to notice of December 16, 1999:

That she will call the attention of the Senate to the Report of the Canadian Group of the Inter-Parliamentary Union on the 102nd Inter-Parliamentary Conference, held in Berlin, from October 9-16, 1999.



She said: Honourable senators, I stand today to present a more complete report of the 102nd Inter-Parliamentary Conference held by the IPU in Berlin in October. The Canadian delegates were Senators Comeau, Fraser and Tkachuk, and, from the House of Commons, Marlene Catterall, Maurice Dumas, Jerry Pickard and Svend Robinson. This event took place amid extensive celebrations of the German Parliament, the Bundestag, for it was 10 years ago that the Berlin Wall came down and the long-held dream of a united Germany became a reality. Parliament had just been moved from Bonn to Berlin, and our inaugural ceremony took place in the newly renovated Reichstag.

Before discussing the results of this conference, I should like to give honourable senators some background on the Inter-Parliamentary Union, which is the oldest parliamentary organization, founded in 1889, and the only one with a worldwide membership. At present, there are 138 countries in the IPU, and honourable senators may be interested to learn that over 1,600 delegates from 131 countries participated at the conference in Berlin.

Within its structure, there are six geopolitical groupings or caucuses that meet prior to and during the conference to discuss strategy for the various debates and activities. The Canadian group is a member of two caucuses, which is quite unusual. One is the like-minded western caucus, known as the Twelve Plus Group. In 1974, there were only six members in that group, and now there are 43 countries. I know that some honourable senators in this room were there in 1974, including our Speaker, Senator Molgat. It is my privilege to serve on the Twelve Plus executive committee. In addition, we belong to the Asia-Pacific Group, in which there are 21 members, because we have a very strong and active interest in that region.

The members of these caucuses, as honourable senators will understand, have very differing political points of view, structures and philosophies, yet we are able to come together to work on issues of mutual interest and of global reach, and to discuss our points of view and make our contributions — and I think most of them are very constructive — to joint proposals on major, worldwide issues that need our collective action. I think honourable senators would agree that most of the issues today are of mutual interest, yet there is no way one single parliament can answer those particular questions.

• (1620)

The IPU is the only worldwide organization that truly belongs to the legislative branch and through which parliaments are present and can project their vision directly on the world scene. Also, these meetings offer a unique opportunity for members to engage in parliamentary diplomacy and to have, in the space of a few days, a great number bilateral contacts with parliamentary leaders, particularly speakers and chairs of the foreign affairs committees from most countries around the world. It is truly a global village in which I think is a privilege to participate.

Parliamentary delegations reflect the political spectrum of each national parliament. Members not only come from the majority party, but also from the opposition. The divergent views

held by members of a delegation are often reflected in that country's vote.

The IPU is considerably more than a meeting place for parliamentarians, it also runs programs and produces very interesting studies. Many of these programs and studies are aimed at enhancing democracy. There are technical programs that offer concrete support to the parliamentary institutions and which promote equal participation of men and women in politics and vigorously defend and support the universal establishment of human rights and democracy.

The IPU undertakes many studies and publishes statistics on worldwide interests. I have often heard statistics quoted both in this house and the other place which come from the studies conducted by the Inter-Parliamentary Union. The participants are parliamentarians who wish to contribute, through permanent dialogue, to the joint global elimination of undesirable developments, including phenomena such as the north-south divide, the alarming destruction of the environment, and the whole question of AIDS.

Dr. Carolyn Bennett of the other place was one of the writers of a most important document related to an interesting study and procedure. That document has just been made available and is being distributed worldwide.

All of these issues that I have mentioned, including that of organized crime, are issues that national governments are no longer able to overcome on their own.

The Inter-Parliamentary Union has an important relationship with the United Nations. In 1996, the two institutions signed an agreement of cooperation to work together on a number of projects. This has led to the signing of individual agreements with various UN agencies such as UNESCO, ILR, and UNCHR.

In essence, it means that the IPU provides a parliamentary dimension to the work of the United Nations. For example, when major international conferences such as the World Food Conference, the World Tourism Conference, or the Conference on the Status of Women occur, the Inter-Parliamentary Union organizes a conference or seminar. These meetings allow parliamentarians to sit together and discuss how the recommendations that flow from these conferences could be implemented in their respective countries.

We all recognize, of course, that the executive can propose, but parliamentarians have to vote. Therefore, parliamentarians should be better informed. It is through the process of the IPU's relationship with the United Nations that we move that agenda forward for parliamentarians.

At the December 1997 Ottawa Conference on Anti-personnel Landmines our own Canadian IPU group organized two round tables for the many parliamentarians in attendance. Legislators were able to define and discuss important issues. For example, they discussed how to implement the legislation required to ban land mines; how to fund for de-mining efforts; and how to bring victim assistance programs to their own various countries.

I might add that this cooperation agreement with the United Nations has resulted in an increase in the volume of activities on the part of the Canadian group. You may be interested to know that the IPU held a meeting for parliamentarians during the United Nations Conference on Commerce and Trade which was held recently in Bangkok. It was interesting to note that Canada could not send a delegation because of insufficient funds being allocated to these international organizations. I think it is important that Canadian representatives be present at these conferences, particularly where Third World commerce and trade issues are being discussed so that we may contribute to the discussions of how to move their agendas forward and improve their financial circumstances.

I will now discuss some of the highlights of the Berlin conference. I would draw to your attention the subjects debated at this 165th session of the inter-parliamentary council. They are issues of concern in the making of our own Canadian foreign policy.

The first topic under the heading of international humanitarian law was the contribution of parliament to ensuring respect for and the promotion of international humanitarian law on the occasion of the fiftieth anniversary of the Geneva Convention. It included such issues as anti-personnel land mines and the International Criminal Court. You will be interested to learn that the drafting committee used the Canadian draft resolution as a base document.

The other major issue which received great focus during this session, was related to the International Criminal Court which will bring perpetrators of genocide, war crimes and crimes against humanity to justice, if their own countries fail to do so in good faith. However, 60 countries must ratify the Rome Statute on the International Criminal Court before it is established. Thus far, only four countries have done so. Unlike the Ottawa Convention on Landmines that came into force in about 18 months, the Rome Statute will take longer because most countries must make major legislative changes, including amendments to their constitutions. It is interesting to note that France amended not only its Constitution, but that the proposed legislation went through their Senate and House of Commons without too much difficulty.

Canada chaired the proceedings of the preparatory committee on the International Criminal Court and has been actively involved in promoting its ratification. Our group, which has worked extensively at the parliamentary level to promote the ratification of the land mine treaty, continued its advocacy work on behalf of the ICC. During the Berlin conference, we spoke to the issue at the plenary session, at committee, and we also sponsored lunch with like-minded countries to discuss strategy for moving this whole issue forward. That is when the French told us how they were handling this issue. It was of great interest

to the Brazilians who wanted to know how to move that agenda forward.

I would point out that, in the House of Commons on December 10, 1999, International Human Rights Day, the ministers of Foreign Affairs and Justice, and the Attorney General introduced legislation to create what will be called the "Crimes Against Humanity Act." This legislation, when enacted, will implement, in Canada, the Rome Statute and will replace the current war crimes provisions in the Criminal Code.

During the Berlin conference we received copies of a particularly useful document called the "Handbook for Parliamentarians on International Humanitarian Law". It is available through my office if honourable senators would like to read it. I think you will find it worthwhile reading. The IPU and the International Committee of the Red Cross jointly sponsor the handbook which provides, in a clear and concise format, what legislators can do to promote key information on international humanitarian law and how to proceed with respect to the Ottawa Convention on Landmines. It also provides a draft outline of the nature of the law required to amend a constitution in order that it can be applied within a country, rather than in a foreign court or the International Criminal Court.

I am impressed by this document, especially as it presents complicated concepts in a straightforward manner. It provides a particularly impressive array of guides for action which were found to be very useful by the parliamentarians who were in attendance — 1,700 of them, by the way.

The second subject that they addressed was the economic crisis which was precipitated by the economic crisis in the Asia-Pacific region. The issue was the need to revise the current global financial and economic model. Again, the Canadian IPU group played a significant role in proposing this subject for debate and study because we had gone to Mongolia and China where the Asia Pacific group had discussed this issue at great length. Canada, having shorelines on both the Pacific and the Atlantic Oceans, was well positioned to raise a subject matter that holds the interest of many countries of the world.

In addition, we provided to delegates copies of the recent report of the millennium round of the WTO by the House of Commons Foreign Affairs and International Trade Committee. Those views and recommendations brought many parliamentarians from other parts of the world to our seats in the plenary hall with both congratulatory messages and questions.

• (1630)

At each conference, there is an opportunity for the selection of a supplementary agenda item. In this case, delegates voted to accept the contribution of parliaments to a peaceful coexistence of ethnic, cultural and religious minorities, including migrant populations within one's state.



A lively debate took place and a very interesting resolution was presented. The Canadian group, through one of its delegates, presented an amendment to the resolution calling for protection from discrimination based on sexual orientation. I can tell honourable senators that this amendment was defeated both at the committee stage and in plenary, but this same amendment, brought by a member of this Senate and a member of the House in 1980, was soundly defeated then and got only seven votes. This time, there were over 350 votes in favour of this particular amendment. The case of sexual orientation is moving forward in the conscience and goodwill of people in terms of non-discrimination.

The agenda for this conference had been established several months prior, but we also had an opportunity to present our views on a number of timely issues, including the situation in East Timor, the overthrow of the government in Pakistan, and the situation in Belarus.

With respect to the question that was most pressing, the case of East Timor, there was a great debate as to whether it was appropriate to pass a resolution. It became an emergency debate. Given that there is a demand for 80 per cent to agree to the debate, the debate was not held. I recommended, as a member of the world executive committee, that we ought to look at the percentage of the vote required to determine if a subject is worthy of discussion.

With respect to Pakistan, we met with the Speaker of the Pakistan Parliament. It was moving to see how he had to go back home to take over the reins of management of the government and to see the distress of the delegates at what had taken place in Pakistan.

With respect to Belarus, two different groups with opposing views came to see us in the Twelve Plus and at the plenary session.

I will mention briefly the work of the IPU committee on the human rights of parliamentarians because I believe this is one of the more significant areas of our activity. Canada is held in very high regard, but approximately 160 parliamentarians are being held in jails across the world because they spoke their minds. They had the right as elected people to speak their minds, but they ended up in prison.

Senator Joan Neiman helped establish that committee. She had visited many countries of the world. Her skill and diplomacy enabled many of those parliamentarians to be released from prison. We Canadians in the IPU continue this work. We meet with ambassadors from the various nations and we speak to leaders. The organization continues to have some success in the release of prisoners, but with more than 100 cases outstanding, it is very important that contacts through Canada continue to be made.

A day-long meeting for women parliamentarians is the first activity of each conference. At the conference, there were 146 women from 95 countries, representing 21 per cent of the

delegates. That is quite a change. Issues relating to women's contributions, as seen from a women's perspective through a gender lens, were examined. For example, Canadian representatives and representatives from Malaysia and the Ivory Coast proposed a draft resolution on behalf of the meeting of women parliamentarians on issues that related to a new global and economic model. I am pleased to report that we have a new president, Dr. Najma Heptulla.

**The Hon. the Acting Speaker:** Honourable Senator Finestone, your 15 minutes have expired. Do you seek leave to finish your presentation?

**Senator Finestone:** Yes.

**The Hon. the Acting Speaker:** Is leave granted, honourable senators?

**Hon. Senators:** Agreed.

**Senator Finestone:** For the first time, the World Organization of International Organizations will have a woman as president. Dr. Heptulla is the deputy chairman of the Rajya Sabha, the Upper House of India. She was elected as president of the inter-parliamentary council this last term. She stated that her selection was:

...a clear reflection of the importance women have come to occupy in parliamentary life. It is also a recognition of the fact that to build a democratic society based on justice and freedom for all, equality of women and partnership between men and women are a fundamental necessity.

Honourable senators, I was pleased to represent Canada as the nominee and then the elected member of the world executive committee of 13 members from around the world.

The next inter-parliamentary conference will be held in Amman, Jordan, at the end of April 2000. After considerable work over several conferences, the Canadian group was successful in getting the topic of culture and cultural sovereignty selected as one of the main issues. Combined with an Iranian proposal on dialogue among civilizations, the exact wording of our proposal is:

The dialogue among civilizations and cultures, including such issues as the role of culture in international cooperation and coexistence; ways of promoting international cultural exchanges; and the preservation of cultural diversity and social pluralism in a globalized world.

I hope we will have an interesting debate in that regard. At the end of August of this year, the IPU and the United Nations are jointly organizing a conference of presiding officers to be held at the UN headquarters immediately prior to the Millennium General Assembly. I am pleased to alert honourable senators to the fact that the Honourable Gildas Molgat, Speaker of our Senate, has been elected and is actively involved and participating in the preparatory meetings.

In conclusion, I underline the important work undertaken by parliamentarians at these international meetings. It is a time when we, as legislators, can meet our colleagues from around the world and learn about their interests and views. At the same time, we can emphasize our own commitment to democratic ideals, good governance, human rights, human security, peace and international cooperation. The objective of the IPU can probably best be described today as promoting the globalization of democracy and assisting parliamentarians to exercise their shared responsibilities for the world in which we live.

**Hon. Marcel Prud'homme:** Honourable senators, having been chairman of the Inter-Parliamentary Union and having organized the last convention in Canada — in Ottawa in 1985 — I cannot let this occasion pass by without asking consent to adjourn this debate under my name. I want to put on the record the 25 years' experience I received from the IPU. In the future of the IPU, I see a growing danger, which I will elaborate upon at a later date.

On motion of Senator Prud'homme, debate adjourned.

## FINANCING OF POST-SECONDARY EDUCATION

### INQUIRY—DEBATE ADJOURNED

**Hon. Norman K. Atkins** rose pursuant to notice of February 8, 2000:

That he will call the attention of the Senate to the financing of post-secondary education in Canada and particularly that portion of the financing that is borne by students, with a view to developing policies that will address and alleviate the debt load which post-secondary students are being burdened with in Canada.

He said: Honourable senators, it gives me great pleasure today to begin debate on the inquiry I set down two weeks ago, an inquiry into the future of post-secondary education in Canada and, in particular, the funding of post-secondary education, especially that portion borne by students through tuition fees.

As I have said before on other occasions, one of the great opportunities we have as senators occurs through the inquiry process. Any senator can place before this chamber a matter of pressing national or regional concern and thus give all senators the chance to participate in the debate on the subject.

• (1640)

We are not constrained by our rules to limit debate in order to give priority to government business, as they must in the other place.

Today, I wish to address what I believe are the three major problems which beset education in Canada: our high dropout

rate, a lack of adequate preparation of our young people for the workplace, and the need to revisit the method of funding post-secondary education in Canada, particularly in relation to our aid programs which purport to help students in need finance their post-secondary education.

Honourable senators, I realize that I am treading in an area which is predominantly within provincial jurisdiction. However, I do not believe we should be restrained in dealing with this subject by the Constitutional straitjacket. There is a leadership role for the federal government in setting forth a vision of education for Canadians that will make Canada one of the leading nations in the global community. The federal government also has a role as the primary funding agent of research and development as part of post-secondary education in Canada, which, if research funds are properly disbursed across the country, would help in regional development.

If Canadians are to prosper in the international marketplace of ideas and jobs in the next century, the problems of our education system must be addressed and resolved. Dr. Kelvin Ogilvie, President and Vice-Chancellor of Acadia University, perhaps described education best when he said that education is ultimately the key to a successful society, but success will only come when the problems are addressed. Students, educators and educational institutions must adapt to the new reality on which our economy is based — not on natural resources but on knowledge. Actually, in many ways, business and commerce already have recognized the advent of the new economy and globalization, as we are looked upon as one of the world leaders in new technology and telecommunications.

Honourable senators, the issue for business arising out of the problems, especially a lack of funding in the field of education, is the failure of our educational institutions to keep up with the demand for graduates in computer science and other high-tech areas. Canada's labour market cannot accommodate untrained people as skill demands are rising to allow us to achieve international competitiveness now and in the future. Market demands, together with competitive pressures and technological change, are shifting the mix of occupations. Fewer jobs are available to those with lower levels of education. Still, students drop out before finishing high school. This makes no sense. By the end of this year, the proportion of new jobs requiring 16 or more years of schooling will rise to 40 per cent. Nearly two-thirds of all new jobs will require at least 12 years of education, meaning high school graduation.

The cost of a high dropout rate to Canadians is lost productivity and a loss of economic prosperity. In the last nine years, the country has generated 1.8 million dropouts. According to a study completed by the Secretary of State in 1993, Canada has forfeited more than \$65 billion in lost productivity, foregone taxes and increased spending on social welfare.

These problems are severe and threaten the competitiveness of Canada in the international arena. Therefore, what can be done?



With regard to Canada's dropout problem, the Organization for Economic Cooperation and Development's report on education, released in September of 1997, states that Canada should look at preventive measures, early childhood education, effective career guidance and more years of compulsory schooling to reduce the number of students who either drop out or graduate without the basic skills for the job market. This study suggests that the dropout rate before high school graduation is approximately 20 per cent, down significantly from the 1991 study, which had it at 30 per cent. Even this is not good enough if Canada is to be competitive in the global community.

An article on page 3 of today's *Globe and Mail* quoted slightly different numbers, but they were still significant to the points that I am attempting to make.

Honourable senators, the school curriculum must be reviewed. The 1991 school dropout survey indicated that a high percentage of the dropouts were dissatisfied with both the variety of courses and their usefulness. They also had difficulty getting along with teachers and felt they did not fit in at school.

Reacting to these comments, the Edmonton Board of Education established a special high school dedicated to repeaters. The high school's focus is on a core curriculum: mathematics, science, English and social studies. Professionals are being brought in to act as mentors, and students have the opportunity to visit local colleges and universities to get a sense of what it is like to pursue higher education. Most important, the school has made a concerted effort to attract teachers with a deep interest in motivating older students. Programs are innovative, with the emphasis on success. However, in order to solve this dropout problem, a commitment is needed by all stakeholders, including governments, both federal and provincial, departments of education, teachers, employers, unions, parents, students, as well as social and volunteer agencies.

Honourable senators, the second problem I wish to address is the lack of adequate preparation of our young people for the workplace. In order to ensure that our students are technically educated to take on the world, it is my belief that the corporate sector must become directly involved in the education process. Businesses should become more active in determining the skills that should be acquired by both the high school and university graduate. I do not believe that business involvement necessarily means that general education goals of literacy and cultural knowledge need be sacrificed on the altar of technical training.

Most, if not all, employers want people whose skills encompass academic achievement, such as written and oral communications, and the ability to think critically regarding problem-solving and decision-making. There are many avenues through which business can help in the education process: cooperative opportunities, job placement, mentors for students, career tutoring and counselling, as well as helping educators to learn the real needs of the business and corporate community. Educators can then realistically identify the needs of employers,

especially in relation to information technology areas. In recent years, universities with which I am familiar had partnered with corporations. This ensures that both faculty and students are familiar with the needs of the workplace and how they can be fulfilled.

As well, professional organizations are working more closely with universities to ensure that students have the technical skills when they graduate to enter directly into professional programs. For example, Waterloo University School of Business is partnering with a professional accounting association in order to establish a combined MBA/CA program.

Honourable senators, these partnerships are a good beginning and demonstrate the benefits of cooperation between business, academic and professional organizations. However, in order for our graduates to compete in the global marketplace, it is important that this partnering be expanded to the greatest extent possible.

Now I wish to focus on cost — costs of post-secondary education, costs borne by the institutions themselves, and the costs shouldered by the students. In December of last year, the British Columbia Ministry of Advanced Education, Training and Technology released a very important study on the costs of post-secondary education in Canada, concentrating on the diminishing federal participation in these costs. This share of total federal program spending devoted to post-secondary education transfers has fallen by 50 per cent since 1979-80. More particularly, post-secondary education was the target of very large declines in transfer payments in 1996-97 and 1997-98. At present, total federal program dollars dedicated to post-secondary education has fallen to only 1.6 per cent of total government spending in 1998-99. The federal government must renew the commitment of previous federal governments and address the deficiency in core funding caused by reduced transfer payments. The provinces and territories need a reliable funding partner, namely, the federal government, for post-secondary education in Canada.

• (1650)

I agree with and support the conclusions of the Progressive Conservative Poverty Task Force, along with the Canadian Federation of Students, who both called for the restoration of the funding of the Canadian Health and Social Transfer to pre-1994 limits, the replacement of some \$3.5 billion. Such a move should help Canadian post-secondary education institutions to meet their social and economic needs and to begin to rebuild their infrastructure and, hopefully, reduce tuition fees. This is based on the fact that a significant portion of the money would go directly to post-secondary education.

Honourable senators, I now want to turn my attention to focus on the costs borne by the students and the financial needs of our post-secondary students.

With the introduction of Canada's Student Loans Program in 1960, we prided ourselves on having solved the accessibility problem for those wishing to attend university. In many ways, I believe we were deluding ourselves even then. The school experience of low-income families, children with disabilities, and those from minority groups, even with the Canada Student Loans Act, differs from the experience of children from middle- and high-income families.

The issue of costs and high debt loads on students must be addressed, but addressed in the context of affordability for all students, regardless of their demographic circumstances. Gone are the days of annual tuition of \$500 or less, as it was when I was in university. Summer jobs were also more plentiful. If you were lucky, you could even cover tuition with the summer wages that you earned. Now, tuition is more than \$4,000 per year on average, and there are book and living costs to be added on. Many students are graduating with crippling debt loads.

The first thing that must be done is to eliminate the taxable status of scholarships. It makes no sense to me for universities and community colleges to give money to students in the form of scholarships which then become taxable in the hands of the students. It distorts the gift from the institution and creates financial problems for the student instead of solving them. It penalizes excellence. The government must eliminate the taxable status of scholarships as a taxable benefit. In this regard, I support the conclusion of the Progressive Conservative Party Task Force on Poverty and the task force recommendations which would raise the minimum income threshold from incurring income tax liability to \$12,000. While this should help students who receive scholarships escape from liability to pay income tax, I still believe that the Income Tax Act should be amended so that scholarships are not included in the taxable income of students.

Solving the problem of student funding once and for all cannot occur through half measures. It will require imagination and a commitment of substantial resources. At the end of the Second World War, Parliament enacted the Veterans Rehabilitation Act, 1945, under which funds were provided for veterans wishing to attend university under the university training program. Those veterans who indicated a desire to attend university had their tuition paid directly to the university by the Department of Veterans Affairs and were given a living allowance on a monthly basis. This continued as long as satisfactory progress was made in university. This was a massive investment by the government in the future of the country. However, because of its success, Canada had a well-educated, tax-paying population contributing positively to society just a few years after the end of World War II. Veterans graduated with an education or trade virtually debt free.

Such an investment in the future of Canada is possible now as we turn the corner into an era of budgetary surpluses. We must make post-secondary education, be it in a university, community college or technical school setting, accessible to all who

academically qualify. Regardless of the person's circumstances, anyone who has graduated from high school should have the opportunity to go on to some form of post-secondary education.

Now is the natural time to study the implementation of such a plan. The agreement between the banks and the government on student loans expires this summer. Now is the time for the federal government to make its presence felt in —

**The Hon. the Speaker:** I regret to interrupt the honourable senator, but his 15-minute speaking period has expired. Is leave to continue requested?

**Senator Atkins:** Yes.

**The Hon. the Speaker:** Is leave granted?

**Hon. Senators:** Agreed.

**Senator Atkins:** Now is the time for the federal government to make its presence felt in a positive fashion by financially getting behind the student aid program in Canada.

We all have heard in the past few weeks how the government and the banks are mishandling this program. The banks are not happy because they are not making enough money. The government has no new ideas, so the only response is to throw money at the problem. Instead of throwing the money at the students, the government is throwing the money at the banks. How ridiculous can matters get?

What is the problem that is causing the banks to approach the government for aid? The default rate on loans by graduating students exceeds one in four loans. That was mentioned in the same article this morning. Do we believe students who graduate and move into permanent, well-paid, challenging jobs are renegeing on loan payments? I doubt it. The problem is, even with the economic growth we are experiencing, many graduating students are being left behind by the job market. What is the government's answer? Give the banks more money, not help the students or create an economic climate which will help first-time job applicants. The government's answer, proposed in a budget two years ago, the Canada Millennium Scholarship Foundation, has met with disastrous results. In many instances, instead of money going into the hands of cash-strapped and loan-weary students, it is going to the provincial governments to be applied to existing debt. The student does not see a dime.

As I stated earlier, we have an unacceptably high school dropout rate in Canada of more than 20 per cent. We should encourage those who wish to continue to learn after they have been out of the system for a few years to resume their education through financial incentives, which is very similar to what happened with people who joined the military during the war and who had not finished their high school education. They came back and finished their high school education and went on to post-secondary training.



What I am proposing here is much more than the one-shot millennium fund. I envision an ongoing commitment to the funding of students who wish to attend learning institutions beyond high school. How can we do this? Let us look at establishing the Canada education assistance program, which would apply to all eligible students pursuing a diploma or university degree. It would require a commitment of perhaps \$1.5 billion or even slightly more on an annual basis. At first glance, this may sound to be a lot of money, but it is not when you compare it to the post-war initiatives for veterans. Remember, also, that part of this amount, perhaps half of it, will be repaid to the government, subject to conditions attached to the program.

Through the years from 1946 to 1950 when the post-war program was in effect, the total amounts disbursed by both university and vocational training, including fees and living allowances, was more than \$1.5 billion in 1999 dollars in total for the five-year duration of the program. Approximately 75,000 veterans benefited. Canada then had a population of under 13 million, as opposed to now when we have 30.5 million persons. As a result of this program, Canada had an energetic and well-educated work force which helped make Canada one of the leading nations in the world in the 1950s and early 1960s.

• (1700)

Annually, there are now more than 700,000 students enrolled in some form of post-secondary education. Of that number, more than 300,000 annually seek financial assistance through existing programs. Under the program I am advocating, some of these students would receive the full amount interest free needed to finance both tuition and living costs if they attend an institution away from home. Some would receive only a portion of the cost, depending on need.

This is a needs-based program. Students in need will be helped. Those who are not need not apply. Obviously, the financial details would have to be worked out as the proposal is studied in depth.

My purpose here is to present a new, effective method of solving the student debt problem. The program instituted for post-war veterans and the one I am proposing are comparable. However, now, in a five-year period, we would be helping significantly more students than those who benefited from the post-war program, and we would be helping a wider cross-section of Canadians.

I truly believe that if the proposal were implemented we would be much closer to solving the accessibility problem and the problem of punitive student debt. The educational institution would benefit as well, as it would receive the grant money immediately.

I am suggesting that eligibility for the program would have to be determined based on certain established guidelines. Those eligible would have their tuition and a portion of their living

expenses funded through this program. Similar to the post-war program, tuition would be paid directly to the educational institution. I also believe it could be administered by the same bureaucracy established to deal with the millennium scholarship fund, of course with help from the student awards offices at the educational institutions. Repayment would only begin one year following the student obtaining full-time employment. Then and only then would interest be charged. Initially, money would be given as a loan, but up to one-half of the amount would be forgivable — perhaps 25 per cent of the amount if the student graduates on time and another 25 per cent if the student receives reasonably high academic standing in two years of the four-year program.

Honourable senators, the time to act to solve the problems of student financing is now. Based on evidence given by the Canadian Federation of Students to the House of Commons Finance Committee, the average student debt upon graduation increased from \$8,900 in 1990 to \$25,000 in 1998. This dramatic increase has put higher education out of reach for most low-income Canadians. Also, I ask honourable senators to remember that these amounts must be paid back out of after-tax money, making it imperative that graduates have the opportunity to find satisfactory jobs.

Of the 29 members of the OECD, Canada and Japan are the only two countries without a national grants program. In a submission to the House of Commons Finance Committee in the fall of last year, the Canadian Federation of Students acknowledged that some of the government's recent debt and interest relief measures will be of some help. However, they stress that a needs-based program is the only method of ensuring that those Canadians who cannot afford the up-front costs of post-secondary education have access to this system.

The recent British Columbia study, to which I referred earlier, states that recent research has shown that young people from low- and modest-income families find costs a barrier to accessing and completing post-secondary studies. The university participation rate for 18- to 24-year-olds from lower socioeconomic backgrounds has increased very little over the last past eight years in comparison with learners from higher socio-economic backgrounds. This is directly related, of course, to the fact that university tuition fees increased on average by more than 126 per cent since 1990, while community college students have been hit by even larger increases of over 200 per cent in some provinces.

I agree with the conclusion of the report of the Canada Centre on Policy Alternatives entitled "Missing Pieces: An Alternative Guide to Canadian Post-secondary Education". It states that we have to get back to a system with needs-based grants and, in so doing, scrap the millennium scholarship fund as being a temporary and insufficient response to education funding. I believe we need a national commitment to fund post-secondary education in Canada, to fund institutions and to provide adequate resources to students who attend them.

The federal government should demonstrate both vision and political will in this area. In the new economy, the divide between those who flourish and those who languish in poverty will be education. Do not forget that if you look at any of the polls these days, health is the first issue and education is the second issue in the country.

It is my hope that upon completion of the debate on this inquiry, in which I would encourage many senators to participate, a reference could take place to the Standing Senate Committee on Social Affairs, Science and Technology. I believe that Senator Kirby, who chairs this committee, is keenly interested in this subject. I and thousands of students across Canada would very much appreciate anything he can do in this area to facilitate the committee's study of this topic. I believe we, as senators, can study this issue and report recommendations which, if implemented, would seriously help all those who are in financial need but wish to pursue a post-secondary school education.

On motion of senator DeWare, debate adjourned.

### ADJOURNMENT

Leave having been given to revert to Government Notices of Motions:

**Hon. Dan Hays (Deputy Leader of the Government)**, with leave of the Senate and notwithstanding rule 58(1)(h), moved:

That when the Senate adjourns today, it do stand adjourned until tomorrow, Wednesday, February 23, 2000, at 1:30 p.m.;

That at 3:30 p.m. tomorrow, if the business of the Senate has not been completed, the Speaker shall interrupt the proceedings to adjourn the Senate;

That should a division be deferred until 5:30 p.m. tomorrow, the Speaker shall interrupt the proceedings at 3:30 p.m. to suspend the sitting until 5:30 p.m. for the taking of the deferred division; and

That all matters on the Orders of the Day and on the Notice Paper, which have not been reached, shall retain their position.

Motion agreed to.

The Senate adjourned until Wednesday, February 23, 2000, at 1:30 p.m.



# CONTENTS

Tuesday, February 22, 2000

	PAGE		PAGE
<b>SENATORS' STATEMENTS</b>			
<b>Archbishop Desmond Tutu</b>		<b>Human Resources Development</b>	
Bestowal by University of Toronto of Honorary Doctoral Degree.		Job Creation Programs—Possible Mismanagement of Funds—	
Senator Poy .....	667	Request for Independent Audit. Senator Angus .....	671
<b>Naval Officers' Association of Canada</b>		Senator Boudreau .....	671
<b>Defence Associations National Network</b>		Job Creation Programs—Possible Mismanagement of Funds—	
Senator Forrestall .....	667	Request for Inquiry. Senator Angus .....	672
<b>Scout-Guide Week</b>		Senator Boudreau .....	672
Senator DeWare .....	668	Job Creation Programs—Possible Mismanagement of Funds—	
<b>Black History Month 2000</b>		Grants to Winnipeg Centre. Senator Stratton .....	672
Halifax, Nova Scotia—Speech by Governor General.		Senator Boudreau .....	673
Senator Oliver .....	668	Job Creation Programs—Possible Mismanagement of Funds—	
<b>Pages Exchange Program with House of Commons</b>		Distribution of Grants. Senator LeBreton .....	673
The Hon. the Speaker .....	669	Senator Boudreau .....	673
		Job Creation Programs—Possible Mismanagement of Funds—	
		Grants to Winnipeg Centre. Senator Spivak .....	673
		Senator Boudreau .....	673
<b>ROUTINE PROCEEDINGS</b>			
<b>Sir John A. Macdonald Day Bill (Bill S-16)</b>		<b>Foreign Affairs</b>	
First Reading. Senator Grimard .....	669	United States—Proposal to Develop Ballistic	
<b>Canada-Japan Inter-Parliamentary Group</b>		Missile Defence System—Request for Information.	
Seventh General Assembly of Asia-Pacific Parliamentary		Senator Roche .....	673
Conference on Environment and Development—Report of		Senator Boudreau .....	673
Canadian Delegation Tabled. Senator Finnerty .....	669	Civil War in Sudan—Involvement of Talisman Energy Inc.—	
<b>Transport and Communications</b>		Discussions with Minister. Senator Andreychuk .....	674
Notice of motion to Authorize Committee to Study and Policy		Senator Boudreau .....	674
Issues for the 21st Century in Communications Technology.		Advice to Companies Seeking to do Business in Countries	
Senator Bacon .....	669	with Human Rights Violations. Senator Andreychuk .....	674
<b>Future of Canadian Defence Policy</b>		Senator Boudreau .....	674
Notice of Inquiry. Senator Forrestall .....	670	<b>Intergovernmental Affair</b>	
		Nova Scotia—Possibility of Cape Breton Becoming a Province.	
		Senator Murray .....	675
		Senator Boudreau .....	675
<b>QUESTION PERIOD</b>			
<b>National Defence</b>		<b>Delayed Answers to Oral Questions</b>	
Ban of Military Equipment—Statement by		Senator Hays .....	675
Leader of the Government. Senator Comeau .....	670	Senator Kinsella .....	675
Senator Boudreau .....	670	<b>Foreign Affairs</b>	
Replacement of Sea King Helicopter Fleet.		Austria—Possible Recall of Ambassador in Response to	
Senator Comeau .....	670	Appointment of Joerg Haider in New Government.	
Senator Boudreau .....	670	Question by Senator Kinsella.	
<b>Industry</b>		Senator Hays (Delayed Answer) .....	675
Increase in Fuel Prices		<b>Labour</b>	
Senator Forrestall .....	670	Plight of Homeless—Status of Government Strategy.	
Senator Boudreau .....	671	Question by Senator Robertson.	
		Senator Hays (Delayed Answer) .....	675
		<b>Industry</b>	
		Purchase of Canada Trust by Toronto-Dominion Bank—	
		Request for Figures on Resultant Loss of Jobs.	
		Question by Senator Di Nino.	
		Senator Hays (Delayed Answer) .....	676

	PAGE		PAGE
<b>Business of the Senate</b>		<b>Parliament of Canada Act (Bill S-5)</b>	
Point of Order, Senator Taylor .....	676	Bill to Amend—Second Reading, Senator Hays .....	684
Senator Angus .....	677	Senator Prud'homme .....	684
		Referred to Committee. ....	685
<b>Criminal Code</b>		<b>Criminal Code (Bill C-202)</b>	
Bill to Amend—Notice of Motion to Reinstate to Order Paper.		Bill to Amend—Second Reading, Senator Kinsella .....	685
Senator Perrault .....	677	Referred to Committee. ....	685
<hr/>		<b>Criminal Code</b>	
<b>ORDERS OF THE DAY</b>		<b>Corrections and Conditional Release Act (Bill C-247)</b>	
<b>Royal Assent Bill (Bill S-7)</b>		Bill to Amend—Second Reading—Order Stands.	
Second Reading, Senator Prud'homme .....	677	Senator Prud'homme .....	685
Senator Cools .....	679	Senator Kinsella .....	685
Senator Hays .....	681	<b>Inter-Parliamentary Union</b>	
Senator Lynch-Staunton .....	682	Report of Canadian Group on 102nd Inter-Parliamentary	
Referred to Committee .....	683	Conference Held in Berlin, Germany—Inquiry—	
		Debate Adjourned, Senator Finestone .....	685
<b>Immigration Act (Bill S-8)</b>		Senator Prud'homme .....	689
Bill to Amend—Second Reading—Debate Adjourned.		<b>Financing of Post-Secondary Education</b>	
Senator Wilson .....	683	Inquiry—Debate Adjourned, Senator Atkins .....	689
<b>Public Service Whistle-Blowing Bill (Bill S-13)</b>		<b>Adjournment</b>	
Second Reading, Senator Kinsella .....	684	Senator Hays .....	693
Referred to Committee. ....	684		





*If undelivered, return COVER ONLY to:*  
Public Works and Government Services Canada —  
Publishing  
45 Sacré-Coeur Boulevard,  
Hull, Québec, Canada K1A 0S9



CANADA

# Debates of the Senate

2nd SESSION

•

36th PARLIAMENT

•

VOLUME 138

•

NUMBER 31

OFFICIAL REPORT  
(HANSARD)

Wednesday, February 23, 2000

THE HONOURABLE GILDAS L. MOLGAT  
SPEAKER





## CONTENTS

(Daily index of proceedings appears at back of this issue.)

---

*Debates*: Chambers Building, Room 943, Tel. 996-0193

Published by the Senate

Available from Canada Communication Group — Publishing, Public Works and  
Government Services Canada, Ottawa K1A 0S9.

Also available on the Internet: <http://www.parl.gc.ca>





## THE SENATE

Wednesday, February 23, 2000

The Senate met at 1:30 p.m., the Speaker in the Chair.

Prayers.

### SENATORS' STATEMENTS

#### SASKATCHEWAN

##### SASKATOON—TRAGIC DEATHS IN ABORIGINAL COMMUNITY

**Hon. Thelma J. Chalifoux:** Honourable senators, today is a sad day for all Canadians, especially the aboriginal communities of Canada. Within the past month, two aboriginal men froze to death on the outskirts of the city of Saskatoon in Saskatchewan. These tragedies would have gone unnoticed had not an aboriginal man survived and come forward to explain how these two men came to be outside the city limits of Saskatoon in sub-zero temperatures.

According to newspaper reports, the Saskatoon police force is in the habit of taking aboriginal people who, in their opinion, have had too much to drink, drive them to this area, dump them out, and leave them to walk back to town. According to one newspaper report, this practice has been going on for years.

The Saskatoon police chief has apologized. Will this apology help the families of the men who died? The RCMP will investigate. Will this be an unbiased investigation? The Federation of Saskatchewan Chiefs wants an independent inquiry. Will anyone listen?

We, as Canadians, pride ourselves on being the best country in the world in which to live, and all the while my people, the Métis, the First Nations and the Inuit, suffer such bigotry and torture. This is not only happening in Saskatchewan, but it happens all over Canada. We truly are a displaced people in our own land. We are a part of Canadian society, and until we address these issues of racial discrimination facing our aboriginal peoples in this country, the division between our people and Canadians will only continue to get wider.

Our people die and no one hears our cry.

[Translation]

#### HEALTH

##### QUEBEC—NURSING CRISIS

**Hon. Lucie Pépin:** Honourable senators, the Quebec Order of Nurses and the provincial government organized a major

information campaign last week to attract college students into the nursing profession. This was in response to a shortage of 2,500 nurses in Quebec. The year 2000 will see the lowest number of nursing graduates in the last 20 years.

A study conducted by the Quebec Order of Nurses indicates that the situation will get worse as baby-boomer nurses retire over the next 15 years, while the numbers of nursing grads dwindle. Campaigns such as Quebec's are being launched across the country, in response to the looming crisis in nursing.

As governments are stepping up recruitment efforts, the Canadian Nurses' Association recently published a study revealing the difficulties facing new nursing graduates as they enter the workforce. The study examined the career progress of nursing graduates from 1986 to 1997, two and five years after graduation. Unfortunately, the results are not surprising.

More new nursing grads are working part-time or for several employers than in previous decades; one in ten nursing grads emigrated to the United States between 1995 and 1997; by 1995, one in five nursing grads from the 1990 graduating class had opted out of the profession; one in three nursing grads interviewed said that, given the opportunity, they would not choose nursing as a career again.

What does this study tell us? It tells us that recruitment is a very small part of the solution. We can lure young people into the profession, but we will not be able to keep them unless working conditions improve.

• (1340)

Ask lawyers, doctors or engineers! Do you think that one out of three grads regrets his or her choice? I cannot think of another profession where the level of satisfaction is so low.

Honourable senators, let us face it, the issue is not really money, even though nurses would not mind getting a decent salary along with reasonable social benefits as well as job security. We are talking about exercising one's profession in a safe and responsible environment, where managers care about your well-being. Is there anything more depressing than going to work every day, knowing that your workload, not to mention the lack of resources and support, is becoming dangerous for patients?

Governments and administrators are just beginning to recognize the true contribution of the nursing staff. They are beginning to see the price that will have to be paid for having basically ignored nurses in the restructuring of hospitals and health services.

What should we do? Governments, employers and nurses' associations must, together, make sure that the profession is in a position to meet the needs of the sick and the elderly. It may be necessary to give up the idea of huge hospitals and opt instead for community care, and reinvest massively in the health care system. Above all, we have to recognize the invaluable contribution of health care professionals, particularly the nursing staff, to the country's well-being and prosperity, and respect them by giving them a major role in the restructuring of the health care system and by paying them a salary in line with their contribution.

[English]

## CANADA-RUSSIA PARLIAMENTARY GROUP

### ANNOUNCEMENT OF MEETING

**Hon. Marcel Prud'homme:** Honourable senators, the Canada-Russia Parliamentary Group is one of the most active groups on the Hill. It is not a travelling agency. It is a working group on the Hill that exchanges views, whether agreeing and disagreeing, with our counterparts in Russia. Unfortunately, the minister who had planned to make a presentation to our group this afternoon is in meetings and will not be able to honour us with his presence.

There will, however, be a short meeting at 3:15 this afternoon with a minister of the Russian Federation, Mr. Alexander Livshits. I draw your attention to the fact that Mr. Livshits is the special representative, newly appointed by President Vladimir Putin. He will be Mr. Putin's Sherpa — that is, special ambassador — to the G-8. He will be available this afternoon in room 356-S from 3:15 to 4:30. His presentation should be of great interest to many senators. Take a few minutes to debate with him, for that is the meaning of a parliamentary group. This group is not funded but certainly is recognized. You may remember that this group, through the initiative of some, was presided over first by our very esteemed colleague, former senator Eugene Whelan.

## QUESTION PERIOD

### INTERGOVERNMENTAL AFFAIRS

#### CLARITY BILL—DIVISIBILITY OF PROVINCES

**Hon. Lowell Murray:** Honourable senators, I should like to return to a matter I raised yesterday concerning the divisibility of provinces. I raised the matter concerning Cape Breton, Nova Scotia, because of its broader implications and because we will be receiving shortly, I presume, Bill C-20. The premise of Bill C-20 is that the present amending formula can be used to effect the separation of any province from Canada. In other words, what is permanent about Canada is the three northern territories and the aboriginal lands. Everyone else can leave. That is the position of the government. The Prime Minister and/or

Mr. Dion have gone further than that and have said that if Canada is divisible, then so is Quebec.

Does that statement apply to all the provinces and, in particular, to Nova Scotia where the issue arises with regard to Cape Breton? Is Nova Scotia divisible? If the minister does not have an answer to the question at hand, might I suggest he obtain a considered reply from the government and bring it forward?

**Hon. J. Bernard Boudreau (Leader of the Government):** Honourable senators, that question, especially as it applies to Cape Breton, is hypothetical in the extreme. I remain confident that such an eventuality will not occur. Certainly, no serious proposition has been made to this point. The honourable senator asked me to obtain a reasoned response and I will attempt to do that.

### HUMAN RESOURCES DEVELOPMENT

#### MILLENNIUM SCHOLARSHIP FOUNDATION—DISBURSEMENT OF FUNDS AS BETWEEN OPERATIONAL EXPENSES AND GRANTS

**Hon. Ethel Cochrane:** Honourable senators, my question is directed to the Leader of the Government in the Senate. The Canada Millennium Scholarship Foundation has released just one annual report to date covering the six-month period from its inception to year-end 1998. In those six months, the foundation consumed \$1.4 million just to administer itself and oversee its investment. This amount was spent even before the hiring of an executive director and the bulk of its planned staff.

Could the Leader of the Government please release a projection as to how much of the original scholarship endowment will be diverted away from our Canadian students in need over the full 1998-2010 period just to operate this private foundation?

**Hon. J. Bernard Boudreau (Leader of the Government):** Honourable senators, the Millennium Scholarship Foundation is the largest single initiative in the field of education ever embarked upon by a Canadian federal government. It is huge in scope and in funding. As we have all come to learn over the last few weeks, a certain diligence is needed to manage and distribute such a fund. No doubt there is a significant administration requirement and cost to the program, and we want to ensure that all the processes are completed properly.

I will seek the information requested by the honourable senator and see whether there are administrative cost projections over the life of the program.

• (1350)

**Senator Cochrane:** Honourable senators, I know where the leader is coming from when he talks about having this fund operate and administered in a particular way, and I agree with that. However, that \$1.4 million divided by an average scholarship of \$3,000 would have provided assistance to another 460 Canadian students. That would really be helping our children. Expenditures of \$1.4 million in six months I feel is a bit much.



Honourable senators, could this scholarship program not be better managed within the existing Canada Student Loan Program, or some other program, thereby bypassing the unnecessary expense associated with operating this private foundation?

Also, honourable senators, I have become rather frustrated as a result of my efforts to obtain an original copy of this annual report. I have contacted the foundation, the Library of Parliament, the minister's office, and I cannot obtain one. Would the Leader of the Government in the Senate please help relieve my frustration and obtain for me a copy of this annual report?

**Senator Boudreau:** Honourable senators, in answer to the second part of that question, I should be able to help the honourable senator in that regard and I undertake to do so. Hopefully, I can produce a copy of the report.

Honourable senators, on the question of administrative costs, obviously the Government of Canada is interested in seeing as much of the money as possible reach the hands of the students. That is the whole purpose of the program. I will attempt to get a breakdown of those administrative costs, including a projection. Hopefully, when the honourable senator has that in her hands, she will be reassured. I shall undertake to do that very soon.

#### JOB CREATION PROGRAMS—POSSIBLE MISMANAGEMENT OF FUNDS—EFFECT ON OFFICIALS OF DEPARTMENT

**Hon. W. David Angus:** Honourable senators, "Les Canadiens sont en colère." Canadians are outraged, honourable senators. They cannot tolerate the continuing cover-up of the HRDC billion-dollar boondoggle. The newspapers today report that the former deputy minister of the department, Mel Cappe — we all know where he works now — admitted to his staff in internal e-mails that the Transitional Jobs Fund was a purely political program, with direction coming from members of Parliament. He informed them that the program's guidelines are "out there" and "we will adapt and learn them as we go...."

Honourable senators, two weeks ago we read in the same newspaper that this government was blaming, behind the scenes, former deputy minister Jean-Jacques Noreau, who called the TJF "walking around money for MPs."

The Liberals are blaming bureaucrats who work in the department now. They are blaming bureaucrats who used to work there. They are blaming everyone but those responsible for this mess, namely themselves. They are the ones who forced those dedicated and honourable bureaucrats to succumb to political pressure. They were the ones who ensured that more than a 1,000 per cent increase in approvals of these grants from the slush fund were given out just before the 1997 election.

Therefore, to the Leader of the Government in the Senate, my question is: Will the honourable leader please confirm or deny the claim made by a senior government source in the *National Post* this morning? The article stated that MPs were really unhappy about losing profile and walking-around money in their communities after the government had cut other programs. It went on to say:

TJF was an explicit answer to the caucus members' concerns and it gave them a direct handle on job creation money. So it's strange that now bureaucrats are being blamed for succumbing to political pressures.

**Hon. J. Bernard Boudreau (Leader of the Government):** Honourable senators, I have had an opportunity to glance at the exchange of e-mails between the two bureaucrats. The deputy minister was telling a junior bureaucrat that "we do not design the programs, Parliament designs program," and "whether a bureaucrat in a given situation thinks the priorities should be this or should be that is not a decision for a bureaucrat."

Honourable senators, I should think that is a position all of us could support. I have not read both e-mails in full but what I have glanced at I take no disagreement with. The interpretation the particular individual went on to give to the exchange of documents is quite another thing. In regard to the two e-mails themselves, I think the response from the deputy minister was appropriate. The deputy minister said that it is not up to us as bureaucrats to make these fundamental decisions, that is for Parliament. I think we all accept that.

We must remind ourselves that MPs from all parties in the House of Commons did play a role and did sign off on those particular grants. I do not recall any party objecting to that process.

#### JOB CREATION PROGRAMS—POSSIBLE MISMANAGEMENT OF FUNDS—RESPONSE OF GOVERNMENT

**Hon. W. David Angus:** Honourable senators, it shocks me, and Canadians are scandalized that this government is trying it get away with the unbelievable manipulation and mismanagement in this billion-dollar scandal. Canadians wish to know the facts. They know the minister was wrong, and they accept her admission that there were mistakes, that there was mismanagement and that efforts are being made to fix the situation. What Canadians want to know, though, is what really happened and why has this stonewalling continued? This government can no longer escape accountability in this matter. It is too serious.

Why is the government continuing to abdicate its responsibility? Why will someone not stand up in their place and tell the Canadian people, "Hey, we made a heck of a mess, these are the facts, we are sorry that we have mismanaged your hard-earned dollars and we will fix it now"?

**Hon. J. Bernard Boudreau (Leader of the Government):** Honourable senators, it is reassuring to hear that the senator agrees that the Canadian public has accepted the fact that the minister initiated an internal audit in the department, and as a result of finding some discrepancies and deficiencies, which she clearly admitted publicly, set up a point-by-point program to remedy those deficiencies. We do not diminish those deficiencies at all. We regard them as significant and they should be dealt with. The minister's very detailed program of action is dealing with these problems.

Honourable senators, I believe the government can stand on its record of action in this matter. I think the amount of disclosure in this particular issue is absolutely unprecedented. We are buried in material. It would take weeks to go through the material that has been made public.

Honourable senators, I congratulate the minister for taking the action she has. I think she is doing the right thing and I know we will all support her.

**Senator Angus:** Honourable senators, the minister has admitted that there are likely many mistakes and inaccuracies in those 10,000 pages that were filed in the House last week and that they were put together in a big rush.

My final question is: Will the government come clean and tell us what the mistakes were and provide the right information when it becomes available?

**Senator Boudreau:** Honourable senators, I believe the government has come forth with all the information as it became clear during the audit process. The government has indicated its step-by-step remediation plan, and it has released all the material on all those tens of thousands of files.

• (1400)

Honourable senators, the government will continue to be open and frank in its treatment of this difficulty. However, we cannot lose sight of the fact that these programs brought great benefit to Canadians. This matter continues to deserve the minister's attention, and I wish to congratulate Ms Stewart for meeting the problem head-on and addressing it.

**Senator Angus:** Slush fund!

## NATIONAL DEFENCE

### CAUSE OF GULF WAR SYNDROME

**Hon. J. Michael Forrestall:** Honourable senators, I wish to remind my honourable friend from Nova Scotia — and he should know this, as many senators do — that the road to hell is paved before elections, not after!

Honourable senators, my question is for the Leader of the Government. Will the minister explain to this chamber and to Canadians why it is that the Government of Canada decided to stick to its diagnosis of stress-related illness as the cause of Gulf War Syndrome when a recently deceased victim of this disease, Terry Riordon, was found by independent examination to have traces of depleted uranium in his body? Sixteen British veterans tested independently in Canada were also found to have traces of depleted uranium in their urine. In the face of all this evidence, why do we continue to rely on stress syndrome as the cause?

**Hon. J. Bernard Boudreau (Leader of the Government):** Honourable senators, as with any other technical problem, the government relies on the best available information. It has been diligent, both in gathering whatever information it could and in

bringing forward expertise within the Government of Canada. However, this is very much an ongoing situation. As additional information comes forward, it will be considered by the minister and his department.

### CAUSE OF GULF WAR SYNDROME— POSSIBILITY OF INDEPENDENT INQUIRY

**Hon. J. Michael Forrestall:** Honourable senators, there is no answer regarding why the government relies on the stress syndrome. That is a contributing factor. We accept the stress argument going back to World War I, World War II, the Korean War, and wherever we have sent contingency groups over the years. However, this situation is different.

Honourable senators, another study in the United States found that 22 other sick veterans had abnormally low N-acetyl-aspartate in their brains when compared with healthy veterans of the Gulf War. This suggests a chemical explosion. All these incidents suggest a chemical explosion — in fact, they suggest it very strongly. Is the evidence not strong enough? It is strong enough to be termed “scientific evidence” but not strong enough to suggest that it really exists?

Honourable senators, why does the government continue to refuse to determine what is wrong with these veterans? What is wrong with these men and women we send off to represent Canada in peacekeeping and other such arrangements around the world? Why can the government not choose an independent process, let someone at arm's length look at the problem, and give us a report so that we might then act responsibly towards our veterans?

**Hon. J. Bernard Boudreau (Leader of the Government):** Honourable senators, there is no question about the government's commitment to Canada's veterans. Those who have served Canada so bravely overseas deserve all our support, respect and gratitude.

Individuals within the department are trained and competent to make judgments in these matters, and this particular matter is continuing to be reviewed. It remains an ongoing matter, and I shall convey the view of the honourable senator that the situation should be reviewed by someone from outside the department.

**Senator Forrestall:** Honourable senators, I would feel much better about the minister's position if I knew he agreed that there has been an ingestion of a chemical that has nothing to do with producing stress but everything to do with producing real illnesses. That is the whole basis for an independent inquiry, which must take place sooner rather than later.

**Senator Boudreau:** Honourable senators, while it is quite true that stress-related illnesses are a real factor in any area of conflict, that does not necessarily mean there are not other factors contributing to the illness of a veteran. Perhaps the minister finds himself in a situation much as I, where one must rely on the best expert evidence, assistance and opinion that one can find. I am confident the minister is doing that, but I will bring to him the honourable senator's concerns.



## THE BUDGET

### REQUEST FOR DETAILS ON INITIATIVES FOR ATLANTIC PROVINCES

**Hon. Mabel M. DeWare:** Honourable senators, I have a question for the Leader of the Government in the Senate. It arises from a statement he made concerning an upcoming budget. On the way to Ottawa by airplane on Monday morning, I had an opportunity to read the *Moncton Times and Transcript*, which stated that the leader said the budget would include some of the measures described in the Atlantic Liberal caucus report, entitled "Catching Tomorrow's Wave." As honourable senators know, two of the proponents of "Catching Tomorrow's Wave" are Senator Moore and Senator Bryden. I compliment the Atlantic Liberal caucus on that report, but we must do something about it.

The minister further stated in the newspaper that:

I am hoping that we are going to see an official government response in the budget, that we will be able to read that budget and there will be some clear acknowledgement of that initiative and as the budget year rolls forward we will see policies developed, very specific policies.

The 1999 budget was introduced at this time last year, yet none of it has been implemented. We are still waiting. We now have a 2000 budget fast approaching. We want to know the following: Is the government leader hoping for a response? Does he in fact know, following conversations with the Minister of Finance, that there will be a response to "Catching Tomorrow's Wave"?

**Hon. J. Bernard Boudreau (Leader of the Government):** Honourable senators, as I am sure the honourable senator realizes, details of the budget, which will come down within days, are not matters that I can disclose at the moment. However, I reaffirm the hope that I expressed then, and hope that the honourable senator shares, that the policies laid out by the Atlantic Liberal caucus in "Catching the Wave" will be reflected in the upcoming budget. I hope we will see the fruits of this labour over the next year.

Honourable senators, I should like to take this opportunity to thank and congratulate those senators who were part of that effort. As mentioned earlier, Senator Bryden and Senator Moore took a leading role, but other Liberal senators from Atlantic Canada also worked very hard. I am hoping that we can show them the fruits of their labour in the upcoming year.

• (1410)

**Senator DeWare:** Honourable senators, it is interesting that the article also mentioned that the minister was appointed in October, and this study was published in October. The minister also stated in the article that he will resign if there is an election call and he will run in his riding in Nova Scotia. Furthermore, if he wins, he expects to be a senior minister in the new Liberal cabinet.

Some Hon. Senators: Oh, oh!

## INDUSTRY

### SHIPBUILDING—POSSIBILITY OF INITIATIVES IN UPCOMING BUDGET

**Hon. Mabel M. DeWare:** Honourable senators, there are some very interesting points in the report authored by the Atlantic Liberal caucus. It talks about the environment, government investment, access to capital and reforms to the financial sector. We in Atlantic Canada are interested in what the Leader of the Government has to say about shipbuilding. The report states that there will be a specific recommendation for national shipbuilding policy in this country. To date, the Minister of Industry has repeatedly ignored this subject. The government has brushed off all calls for measures that would allow shipbuilders, such as the one in Saint John, to compete against subsidized yards in other countries. Calls for new means of export financing have been ignored, as have calls for new tax rules.

The minister is now smiling. Perhaps he knows something we do not know. The government has gone out of its way to leak details about this budget, but to date there has been not one word about shipbuilding.

Since the minister might have an inside track to the budget, will he tell us if there is a national shipbuilding policy in it, as has been suggested by the Atlantic Liberal caucus?

**Hon. J. Bernard Boudreau (Leader of the Government):** Honourable senators, I thank the Honourable Senator DeWare for bringing those comments to the floor of this chamber. I have not read the article to which she refers. Perhaps she might send me a copy. I would be interested in reading it.

Certainly, I do not recall some of the comments she attributes to me, although it could be the case that I made them. I can tell her that I have been very careful with airplane conversations since my appointment.

While we cannot discuss at this time the details of the budget, I am sure that by this time next week we will be in full discussion of its elements and applauding those elements, no doubt universally, as they address some of the exciting and challenging issues facing our country over the coming years.

**Senator DeWare:** Honourable senators, on February 4, the "Winning the West Report" was introduced to the Prime Minister. I hope to heavens the next report will be entitled "Winning Atlantic Canada." The minister got his oar in first.

**Senator Boudreau:** Honourable senators, as I have said, I am relying on the good work that was done by the Atlantic Liberal caucus, specifically the senators who play a lead role. I know it does not come as a surprise to anyone in this chamber that senators in the Atlantic caucus played a leading role and produced a very credible blueprint for government. Part of my responsibility as a senator from Nova Scotia is to join my colleagues from Atlantic Canada to ensure that, as much as possible, the vision expressed in that document comes to fruition in the year ahead.

## THE SENATE

### MOTION TO ESTABLISH OFFICE OF CHILDREN'S ENVIRONMENTAL HEALTH—RESPONSE OF GOVERNMENT

**Hon. Mira Spivak:** Honourable senators, on November 17 last, the Senate unanimously passed a motion urging the government to establish an Office of Children's Environmental Health. Honourable senators may recall that this was proposed to be an arm's-length agency to promote the protection of children from environmental hazards. I am aware that there is a small interdepartmental committee on children's environmental health. Several divisions of Natural Resources Canada will be meeting in May on the same subject. These are positive steps.

Honourable senators, neither the individuals involved in these efforts, nor the senators in this chamber, have received a clear indication of the government's intention in response to this motion in the Senate. Is it the government's intention to create such an office? Are these departmental efforts the first step in that direction, or is there another plan? What precisely is the government's intention in this matter in response to a unanimous motion of the Senate?

**Hon. J. Bernard Boudreau (Leader of the Government):** Honourable senators, I thank the Honourable Senator Spivak for bringing that issue to the floor of the chamber. As she will know, we had a private discussion about this issue some time ago. At that time, I believe I indicated that I would have my staff do a follow-up with the honourable senator. I believe there was contact with her office. If the honourable senator has not received a satisfactory response to date, I will attempt to check with my staff and provide it to her.

## BUSINESS OF THE SENATE

**Hon. Noël A. Kinsella (Deputy Leader of the Opposition):** Honourable senators, we wish to make a request of the government side. Today's Order Paper is hardly pregnant with business. Since this Question Period is gestating many important matters of interest to Canadians, would the government side agree that we continue with Question Period for another five minutes?

**Hon. Dan Hays (Deputy Leader of the Government):** Honourable senators, while the request is unusual in that today is a short day, the position of our side is that we would agree to a short extension of the Question Period of no more than five minutes.

## THE SENATE

### MOTION TO ESTABLISH OFFICE OF CHILDREN'S ENVIRONMENTAL HEALTH—RESPONSE OF GOVERNMENT

**Hon. Mira Spivak:** Honourable senators, I appreciate the efforts of the Leader of the Government to direct a response to

my office. However, I remind the minister that I have been referring to a motion that was passed by this chamber. A response must come before this chamber in some manner so that it is officially recorded. I would be very pleased if that could happen in a short time, something which would indicate the government's intention with respect to the specific motion passed by the Senate.

**Hon. J. Bernard Boudreau, Leader of the Government:** Honourable senators, I agree with the honourable senator that it is appropriate for the answer to come through this chamber. I hope that she did not feel I was in any way reprimanding or reproving her in my response.

Perhaps we can discuss this issue to ensure we know exactly what has transpired to date. Certainly, I will bring a response to the chamber, as that is entirely appropriate for me to do.

## FOREIGN AFFAIRS

### CIVIL WAR IN SUDAN—INTENTION OF GOVERNMENT TO TAKE ISSUE TO UNITED NATIONS SECURITY COUNCIL—REQUEST FOR DETAILS

**Hon. A. Raynell Andreychuk:** Honourable senators, the Minister of Foreign Affairs has indicated that he will take the issue of Sudan to the Security Council. I wish to know what issue the government will be taking to the Security Council that will impact on Sudan. In particular, I should like to know how this action by the Security Council will be different from any action taken and contemplated by the Human Rights Commission.

**Hon. J. Bernard Boudreau (Leader of the Government):** Honourable senators, I have to refresh my memory on that information.

As I understand it, in April, Canada will assume the presidency of the UN Security Council. The indication from the minister is that Canada will use that position to further the efforts of the regional peace process of the Intergovernmental Authority on Development.

• (1420)

It will be another vehicle whereby we can make Canada's position known with respect to the horrible price being extracted from civilians and innocent victims in that country as a result of the civil war.

**Senator Andreychuk:** Honourable senators, in light of the fact that China has a veto in the Security Council, I would like to know what action we are actually contemplating. Will it be against the companies working in Sudan, companies in which China has as great an interest as Canada? Why do we feel we will achieve success on the issue of thwarting this kind of corporate activity that harms civilians when we have not been able to do so in another environment? How will we get around the veto?



**Senator Boudreau:** Honourable senators, as the honourable senator points out, Talisman is a minor partner in an operation in which the major partner is a Chinese company. That serves to illustrate how difficult it is to deal with this sort of activity unilaterally when different countries are involved. In fact, if Talisman were to vanish tomorrow from Sudan, it probably would make absolutely no difference to the activity there. One company would simply be replaced by another. It is for this reason that Canada has a tradition of not acting unilaterally in these matters.

The minister is saying that we will have a unique opportunity to act and to discuss this matter from a multilateral perspective in our position as Chair of the UN Security Council. Precisely what the tactics would be in that case, I am not sure at this stage. I am not certain the minister would have those tactics before him, and I am not sure he would feel it was in the public interest to share them at this time.

The UN Security Council is the highest international forum, so even having that body focus on these events will have a good effect. One hopes that it will lead to some alleviation of the suffering of the people in that country.

### VISITORS IN THE GALLERY

**The Hon. the Speaker:** Honourable senators, I should like to introduce some distinguished visitors in our gallery. They are a group of members of the Joint House Services Committee of the Parliament of the Republic of Ireland. They are led by the Honourable Ben Briscoe, the chairman of the committee.

**Hon. Senators:** Hear, hear!

**The Hon. the Speaker:** On behalf of all honourable senators, I wish you welcome here in the Senate of Canada.

### BUSINESS OF THE SENATE

#### POINT OF ORDER

**The Hon. the Speaker:** Honourable senators, I have had a request from Honourable Senator Gauthier to speak further on the point of order raised yesterday by Honourable Senator Taylor. As honourable senators may know, I was not in the Chair at the time and did not hear the arguments of yesterday. It would be helpful to me to hear further argument on the question from any senators who may wish to participate. If it is agreeable, I will call on Honourable Senator Gauthier.

Is it agreed, honourable senators?

**Hon. Senators:** Agreed.

**Hon. Jean-Robert Gauthier:** Honourable senators, if you review yesterday's *Debates of the Senate*, you will see that they

confirm that Senator Taylor raised a proper point of order following some language used in an exchange between Senator Angus and Senator Boudreau, the Leader of the Government.

On page 671, when Senator Angus was talking about the problems in the Human Resources Development Department he said:

My staff and I have spent considerable time poring over the pages. Given that this list was cobbled together only after Minister Stewart had been caught with her hand in the cookie jar...

Honourable senators, I find this abusive language. It implies dishonesty. I do not think it is proper to make that kind of comment in the Senate regarding what is a serious political situation. I do not think senators should reflect on members of the other House in that way.

On the next page, there is another statement by Senator Angus while raising a supplementary question:

Instead of integrity, we have seen a minister and a Prime Minister misleading the public day after day.

Honourable senators, both of those statements, in my view, are against our rules. Rule 51 states:

All personal, sharp or taxing speeches are forbidden.

In addition, at page 148, Beauchesne's clearly identifies the word "misleading" as unparliamentary, and I do not have to explain the meaning of having one's hand in the cookie jar. That implies dishonesty. I know Senator Angus to be a gentleman, and I would like him to withdraw those two expressions he used yesterday.

**Hon. Noël A. Kinsella (Deputy Leader of the Opposition):** Honourable senators, when the point of order was raised yesterday, the honourable senator who was in the Chair at the time made a determination that she had heard enough. Indeed, I came to the same conclusion and concurred, in my own mind, with her statement, because the point of order that was raised by Senator Taylor is no point of order at all.

Senator Taylor rose, holding in his hand that green book that speaks to things that occur from time to time in the other place. We have a red book that outlines the rules of procedure in this place. The very first rule of this place is that our rules take precedence over the conduct of our business, and that it is only for reference and help that we would draw on the procedural literature such as contained in that green book.

Honourable Senator Gauthier has drawn our attention to rule 51, which provides as follows:

All personal, sharp or taxing speeches are forbidden.

I submit that that is predicated on speeches in this place where one honourable senator is addressing another honourable senator.

Substantively, nothing was said yesterday that is not true, veritable and accurate, and that, in and of itself, guarantees and constitutes that there is no point of order. However, the rule speaks to honourable senators saying vexatious, sharp or personal things to each other in the conduct of our debate.

Honourable senators may want to consider the colourful language that is sometimes used in the other place concerning honourable members of this house. Even if we were to accept their standard, yesterday's comment, which in and of itself is not vexatious, sharp or personal, would not meet that standard at all.

**Hon. Dan Hays (Deputy Leader of the Government):** Honourable senators, I should like to comment on the point of order as well. I understand His Honour has invited additional comment, and, of course, Senator Kinsella, in commenting on it, I think, is deemed to have agreed with that request.

• (1430)

I would take issue with what I have heard from Senator Kinsella, which is that we may have a lesser standard of behaviour in this place than in the other place. The interpretation of our rules is provided for in rule 1(1), which states:

In all cases not provided for in these rules, the customs, usages, forms and proceedings of either House of the Parliament of Canada shall, *mutatis mutandis*, be followed in the Senate or in any committee thereof.

I am also a little surprised at Senator Kinsella associating himself with the language of Senator Angus. I know about the rules on comments made in this place or the other place and their legal standing being different from comments made outside of the chamber.

Honourable senators, I support the point of order and feel that his language is inappropriate in this place. I have added a bit in speaking to this matter, but I did so for essentially the same reasons as Senator Gauthier and Senator Taylor.

**Hon. Nicholas W. Taylor:** Your Honour, if I stand and speak, will my speech have the effect of closing debate on this point of order? Will I be interfering with another senator who may wish to speak?

**The Hon. the Speaker:** Our practice has been that we are prepared, on points of order, to listen to honourable senators even if they wish to speak more than once. It is simply up to the Speaker to decide at which point enough information has been provided. I am prepared to hear Senator Taylor again.

**Senator Taylor:** Honourable senators, I should like to speak to the comments of the Deputy Leader of the Opposition in the Senate. I think he misquoted the Acting Speaker yesterday. The Acting Speaker was doing a very good job and she reserved decision. She did not make a ruling that there was no point of order. As a matter of fact, the Acting Speaker said:

Honourable senators, the Speaker will take the point of order under advisement.

I know I wear a hearing aid and occasionally it must be turned up, but I think I will have to lend it to the honourable senator opposite because he missed that comment completely. Therefore, the Acting Speaker acted rightfully.

As Senator Hays has already mentioned, we are not supposed to operate at a lower standard than the other house. I think this is the first time in my years of parliamentary debate that I have heard someone say we should junk Beauchesne and that we know how to do things without Beauchesne.

The honourable senator used the word "privilege". I did not raise a question of privilege. That is entirely different. I raised a point of order.

This may surprise the honourable senator, but whether a statement is the truth or not is entirely irrelevant when one uses certain language in the house. It does not matter whether the so-called offence or accusation is true or whether an individual has misled. The truth has no relevance at all as to whether bad language is used.

Finally, and this is more an editorial comment, I hate to take instructions or even stand still when someone from that side of the house mentions being in a cookie jar.

**Senator Gauthier:** Honourable senators, the purpose of the rules is to maintain order in this place or in the other place. The rules are specific on language one cannot use in this house or in the other. I have quoted that rule from the authorities.

This may be of interest to some honourable senators: If one cannot repeat what one says here outside the house without becoming exposed to a legal action, why would one be allowed to do it in here?

**Hon. Anne C. Cools:** Honourable senators, I wish to add a very few words to this debate. I am afraid I did not hear the exchange yesterday, but I would like to say quite strongly and firmly from what I have heard today that no valid point of order has been raised. To my mind, certainly there is nothing unparliamentary. I should like to say absolutely that there is nothing unparliamentary in what was said. What was said may have been silly. It may have been inelegant. Perhaps it was not elegant, perhaps it was not erudite, perhaps not even clever, but it was certainly not unparliamentary in any form or fashion.

Senators here in debate have much more freedom. I am not proposing that those freedoms be violated. We have much more freedom than other legislative chambers because this is an upper chamber. We are allowed to speak to each other and even allowed to go into a more informal mode.

Senators should obviously exercise restraint and should be able to exercise a turn of phrase which does have a degree of elegance. At the same time, I do not think that the particular words in question are to be so impugned as to cast any negative judgment on any honourable senator.



Finally, honourable senators, I would add that the first duty of senators is to defend each other's right to speak, not to be on the floor trying to find a reason to pass judgment on another senator because the senator was not quick-witted enough, fast enough on his feet, smart enough, clever enough, kind enough or charitable enough to say something different or better.

**Senator Bryden:** He is not quick-witted enough.

**Senator Taylor:** Not even half.

**An Hon. Senator:** Remember the GST and the kazoos.

**Senator Cools:** Honourable senators, we should always be cautious about passing judgments on one other. I was trained that way. I am also aware that His Honour will exercise enormous and practised judicious judgment in this case.

I cannot resist the temptation to say that I was here during the GST debate. On that note, I just want to say to those fellows across the way who said "Remember the GST" that I was here and there were no kazoos. There were whistles and bells, but no kazoos. I know that because I know where the whistles came from.

**The Hon. the Speaker:** Honourable senators, if no other honourable senator wishes to speak to the point of order, I will take it under advisement. I thank honourable senators who have participated.

## ABORIGINAL PEOPLES

### NOTICE OF MOTION TO AUTHORIZE COMMITTEE TO PERMIT ELECTRONIC COVERAGE

Leave having been given to revert to Notices of Motions:

**Hon. Jack Austin:** Honourable senators, I give notice that on Thursday next, February 24, 2000, I will move:

That the Standing Committee on Aboriginal Peoples be empowered to permit coverage by electronic media of its public proceedings with the least possible disruption of its hearings.

• (1440)

## ORDERS OF THE DAY

### MEDICAL DECISIONS FACILITATION BILL

#### SECOND READING

On the Order:

Resuming debate on the motion of the Honourable Senator Carstairs, seconded by the Honourable Senator

Pépin, for the second reading of Bill S-2, to facilitate the making of legitimate medical decisions regarding life-sustaining treatments and the controlling of pain.—(*Honourable Senator Cools*).

**Hon. Anne C. Cools:** Honourable senators, I rise today to speak to Bill S-2, to facilitate the making of legitimate medical decisions regarding life-sustaining treatment and the controlling of pain.

I should like to thank Senator Carstairs for placing this important debate before the Senate. This debate is about serious illness, pain suffering and death. This touches all of us and evokes our sympathy and humanity. This subject matter is weighty and touches our foundational notions of life and of existence itself. This subject interests me, and I regret that I was not permitted to serve on the Special Senate Committee on Euthanasia and Assisted Suicide. Bill S-2 will protect decisions, decision-makers and health care providers, but Bill S-2's protection for their patients is not as clear.

**The Hon. the Speaker:** Honourable senators, could I ask honourable senators who are presently having conversations to please have them outside of the chamber so other honourable senators can hear the speaker?

**Senator Cools:** Honourable senators, undoubtedly every human person has a legitimate right to decline or to refuse unwanted medical treatment. Every patient is entitled to decline unwanted medical treatment, but quickly the human mind will leap from the legitimate notion of patients refusing treatment to the illicit notion of euthanasia or doctor-assisted suicide. I wish to draw senators' attention to an exchange on July 5, 1994, at the Special Senate Committee on Euthanasia and Assisted Suicide, between the witnesses and our own Conservative Senator Mabel DeWare. This exchange reveals the short leap from the concept of refusing treatment to the concept of euthanasia. David Brown and Angela Costigan, lawyers from the Toronto Thomas More Lawyers Guild, had spoken to the question of patients' right to refuse treatment, to allow a disease, a pathology, to follow its natural course. Mr. Brown then addressed the more dangerous proposition that he saw as being, "...whether our law should be amended to allow one person to kill another."

In this exchange, these lawyers had been answering Senator DeWare's questions about whether they believed in a patient's right to refuse medical treatment. Mr. Brown had replied affirmatively, informing that the common-law principles of a patient's right to refuse treatment were well established. The exchange, found at page 12:15 of Committee proceedings was as follows. Mr. Brown said:

That is why we did not include it in the brief, because we saw the more dangerous proposition that would be put forward. It is not that individuals could refuse treatment, but that the law would allow one person to kill another, and that is the radical change we submit should not be written into the law.

[ Senator Cools ]

Senator DeWare said:

That includes the fact that we have the right to refuse taking chemotherapy, for instance. What we are saying is that we are actually allowing our life to end the way we want it to end, without committing suicide or having someone assist us to commit suicide.

Mr. Brown said:

That is the natural course of the disease. In our view, a situation where a person says, "I know I now have this disease; I will let nature take its course, and I will try and make the best of it during my final weeks or months," is completely different from the law allowing a doctor or some other person to take your life. Society rejects people killing people, which is essentially what doctor-assisted suicide is. It is the termination of one person's life by another person.

Senator DeWare said:

I have a very difficult time with the word "killing." I am not sure which word I would prefer. I guess it is because I do not want to face the facts. It seems to me that killing means we are actually committing murder. I believe that is what we are doing, but not in the same sense.

Miss Costigan asked Senator DeWare:

How could it not be in the same sense?

Senator DeWare said:

If I take a gun and shoot somebody, I am killing them.

Miss Costigan replied:

That is right. You are intentionally taking their life, and if you give them an overdose, you are also intentionally taking their life, but with their consent.

Senator DeWare added:

It is with their consent, and there are possibly other reasons involved, as well. When it has been determined that a person has only a short time to live, do you not think that euthanasia, not assisted suicide but euthanasia, happens all the time?

Mr. Brown then commented on Senator DeWare's questions and attempted to address her discomfort with the word "killing."

Honourable senators, Mr. Brown also told the committee that the concept of unlimited individual right is unknown in Canadian law. He stated at page 12:7:

We have two responses to this principle of individual autonomy. Our first response is that our Canadian legal system has never recognized a principle of unrestricted individual autonomy. It is part of our legal system and tradition that all acts of an individual are subject to some restraint or some limitation for the good of society.

He added:

In particular, our law has never recognized the principle of consensual death.

About the absence of consensual death in the law and the constitution of Canada, he continued, at page 12:8:

In our submission, that particular principle is a profound principle, one that has been recognized and acted upon in this country for decades. We believe it indicates a profound insight by our law that the killing of any person, even at the person's request, is not simply an isolated act or, in the language of the current debate, an exercise of an individual's autonomy rights. The killing of any person, for whatever reason, is a social act which goes to the very core of our understanding of society and full citizenship in society. As we indicate in section 3.07 of our brief, the frequency, manner and motivation for killing are all matters with social consequences, because the measure of any civilized behaviour is the degree of protection which society affords to human life.

Honourable senators, society has upheld that the taking of a human life is a social act that involves all society. The criminal law reflects this, and has an absolute prohibition to the taking of the life of any person. For this reason, the Criminal Code also has absolutely prohibited the consent of any persons to their own killing. Criminal Code, Section 14, states:

No person is entitled to consent to have death inflicted on him, and such consent does not affect the criminal responsibility of any person by whom death may be inflicted on the person by whom consent is given.

That section articulates that the most fundamental, foundational notion of the Criminal Code is that no person can consent to his or her own killing. Further, the Criminal Code, Section 241, prohibits counselling or aiding suicide. That is the position of the law as supported by the weight of statute, jurisprudence, and the moral and legal teaching for centuries. Born of the sixth commandment, "Thou shalt not kill," the Criminal Code's absolute prohibition against killing has been a strong moral deterrent. My concern is that Bill S-2 would end this ancient, absolute prohibition on killing.



Honourable senators, Bill S-2 would amend the Criminal Code irrespective of any beliefs, assumptions or hope to the contrary that have been entertained here. In exempting certain persons from the Criminal Code, the bill relies on the criminal law power of Parliament. Bill S-2 would overturn the legal and constitutional regime of Canada that has protected the life and limb of all. It would overturn the absolute prohibition of the provisions of the Criminal Code that have stood the test of time. Bill S-2's clause 2 addresses the alleviation of pain by medical treatment that might shorten life. Clause 2, headed, "No offence committed for pain control," states:

No health care provider is guilty of an offence under the *Criminal Code* by reason only that the health care provider, for the purpose of alleviating the physical pain of a person but not to cause death, administers medication to that person in dosages that might shorten the life of the person.

I repeat, "dosages that might shorten the life of the person," the circumstance known as "hastening" or "accelerating" death. Bill S-2 would compromise these provisions of the Criminal Code, including sections 14 and 226, and even the principles underlying the code itself. Section 226 on acceleration of death states:

Where a person causes to a human being a bodily injury that results in death, he causes the death of that human being notwithstanding that the effect of the bodily injury is only to accelerate his death from a disease or disorder arising from some other cause.

An older version of that provision is a lot more clear. The 1892 Criminal Code's section 224 had stated:

Every one who, by act or omission, causes the death of another kills that person, although the effect of the bodily injury caused to such other person be merely to accelerate his death while labouring under some disorder or disease arising from some other cause.

• (1450)

The issue is acts or omissions. Bill S-2 repudiates the Criminal Code and reverses well-established principles fundamental to the structure of criminal law. Further, Bill S-2 legislatively relies on motive, rather than on actions, as the proper mode of writing law. Historically, Canadian and British criminal law has eschewed and rejected definitions of law in terms of motive. Motive is infamously difficult to establish and cannot, like intent, be inferred from a person's overt actions. Bill S-2, as legislation, is proposing that which is not part of the recognized structure of the criminal law, and consequently is legislatively insufficient.

Honourable senators, Bill S-2 would protect from liability those persons who serve patients' wishes to exercise their well-established rights to refuse unwanted medical treatment. In so doing, however, it would take the shortening of life and killing

out of the Criminal Code and out of its category of murder. I support wholeheartedly the patient's right to refuse treatment, and I support the need for sound medical practices to effect this. However, I quarrel strenuously with the removal of the absolute prohibition against killing. When its removal claims that it is not amending the Criminal Code, I am even more alarmed.

Honourable senators, I understand and I am sensitive to the great difficulties involved in scripting a statutory provision that would accomplish this purpose, while yet not lending itself to abuse. These difficulties, however, cannot be overcome by defeating the absolute prohibition on the taking of life. They are overcome by adequate and studied drafting, which contemplates the mischief, the evil, which we are trying to cure. Human deviance and deceit are incalculable, and certainly will be pressing against an inadequately drafted legislative proposal. Further, Bill S-2 attempts this, not in the usual legislative method of enacting criminal offences and proscribing the fitting punishment, but instead, as an alternative would create a blanket prohibition against the charge, prosecution, and conviction of an entire class of persons by a proposal unknown to law. That class of persons is health providers. Health providers would receive a blanket immunity and enormous powers, for reasons that neither the bill nor its sponsor has yet told the Senate.

Honourable senators, Bill S-2 is a blanket exemption from all Criminal Code provisions for health care providers in all health care situations, including the home, the hospital and institutions. The Ontario Chief Coroner, Dr. James Young, and the Deputy Chief Coroner, Dr. James Cairns, testified before the Special Senate Committee on Euthanasia and Assisted Suicide. They noted the peculiar risks that lay in some institutions. Dr. Young stated, at page 20:5:

Institutional euthanasia is, to our minds, a serious problem that needs to be looked at and guarded against. Within an institution, there is an even greater chance that the person may not be aware of the decisions being made. The chances of abuse and one person imposing their will on the institution are much greater. It concerns us greatly that we can have situations where people such as Dr. Kevorkian decide that they are...judge and jury, and operate within an institution. They may or may not discuss what they are doing with the people involved.

Honourable senators, I support neither euthanasia nor doctor-assisted suicide, nor would I support any initiative that might attain that result.

Honourable senators, it is well known in law that, "No one has a right to shorten by an hour the life of a human being...." However, doctors and nurses must be protected. Provisions to protect health care professionals must be drafted and enacted without altering the absolute prohibition on taking life, or shortening life, and also without the attendant problems of blanket immunity to those professions from prosecution for any crime whatsoever under the Criminal Code.

In conclusion, I favour support for those doctors and nurses who most nobly and diligently serve sick patients — a group who deserves our best consideration. However, I will not support any opportunity for deviants or would-be deviants in the health care field. The difficult challenge of conceptualizing and drafting a law which does not attract the particular abuse of murder is one that must be met if this chamber will do its job sufficiently, and must be met if senators are equal to the task. This bill is responding to the need of suffering and to the need for action, and is a well-intentioned initiative, but the bill would abandon all antecedent law and principles. At law, one cannot protect life by disregarding the Criminal Code prohibition about the protection of life.

Honourable senators, on patient rights and on the meaning of a human life, senators must confront the important question of the power to grant or deny life, to take or not to take a life and the societal rights and obligations that are owed and due as members of the body politic in respect of the protection of human life. Until recently, even suicide had been a crime. Suicide had been defined as legal self-murder. I uphold that human life is not one's own to dispose of as one sees fit. Human life is social, and every human being has an interest in every other human's life. On the vital question of society's interest in every single life, I should like to leave a quotation from one of the finest jurists on criminal law. I speak of Lord Chief Justice Sir Matthew Hale. In his most excellent book, *The History of the Pleas of the Crown*, which was printed posthumously, he wrote, at page 412:

No man hath the absolute interest of himself, but 1. God Almighty hath an interest and propriety in him, and therefore self-murder is a sin against God. 2. The king hath an interest in him, and therefore the inquisition in case of self-murder is *felonice et voluntarie seipsum interfecit et murderavit contra pacem domini regis*.

Honourable senators, in English that means that even suicide is a murder, a cruel murder against the peace of the Lord King or Queen. Every violation of every human being's life is a violation against all of us.

Honourable senators, I am quite prepared to see this bill go to committee for study.

Once again, I thank Senator Carstairs. I think what the honourable senator has been doing is very ambitious. Senator Carstairs is attempting to respond to some very important issues and some very important problems.

• (1500)

Honourable senators, in my view, the bill as it stands falls short. However, I welcome the debate, and I am glad to see that the debate has finally been engaged. Having said that I look forward to the debate, to the study and to consideration of the bill in committee.

Honourable senators, I know that I frequently take a few positions that in today's communities are described as conservative. However, it is a contradiction in terms to describe me as a conservative. I sincerely believe that one cannot protect life by removing the prohibition that protects life.

I thank you, honourable senators, for your indulgence and your patience.

**Hon. Douglas Roche:** Honourable senators, would the Honourable Senator Cools accept a question?

**Senator Cools:** Yes, I will.

[Translation]

**Hon. Aurélien Gill (The Hon. the Acting Speaker):** Honourable senators, the time set aside for this item on the Order Paper is up. Is the honourable senator granted leave to continue?

**Hon. Senators:** Agreed.

[English]

**Senator Roche:** Honourable senators, I tried to follow Senator Cools' speech, but I should like her to clarify something for me. Given her reservations, would she vote for the bill on second reading in order to send it to committee?

**Senator Cools:** Honourable senators, I strongly support the ability and the duty of senators to bring forth initiatives. Quite frankly, I sincerely believe that it is cruel and irresponsible on the part of members to thwart or block individual member's initiatives.

Let me put it this way. I said before that I am prepared to see this bill go to committee and I will actively see that it gets to committee.

[Translation]

**The Hon. the Acting Speaker:** Honourable senators, I must inform the Senate that if Senator Carstairs speaks now, her speech will have the effect of closing the debate on the motion for the second reading of this bill.

[English]

**Hon. Sharon Carstairs:** Honourable senators, I wish to thank each and every senator who contributed to this second reading debate. I have listened with interest and noted the concerns expressed by some honourable senators. I hope that the committee hears from witnesses who specifically address those same concerns so that the committee can give this bill the fullest possible debate and discussion. I reiterate, however, that this bill is not the work only of myself and of my staff. This is the third such bill. I introduced a bill that died on the Order Paper; Senator Lavoie-Roux introduced one that died on the Order Paper. This is the third in a series of bills.



I also want senators to be aware that this bill is the collective work of all the senators who sat on the Special Senate Committee on Euthanasia and Assisted Suicide. This bill comes as a direct result of the unanimous recommendations of that committee. Any recommendations that were not unanimous did not, in any way, shape or form, find their way into this bill. It is very much a collective bill. It is a collective work of Senators Lavoie-Roux, Corbin, Keon, Beaudoin, DeWare, former senator Neiman and the late senator Desmarais.

Honourable senators, it is my absolute intention — perhaps not met — that this bill reflect the spirit of the report entitled “Of Life and Death.” If it does not reflect that spirit, then I would be the first to welcome amendments and changes to this bill.

This bill, honourable senators, is not about euthanasia and assisted suicide. This bill is about ensuring that Canadians have control over their care. It ensures that Canadians have adequate amounts of pain relief when they need it.

Honourable senators, one of the issues that concerned all members of the committee, and one which certainly led me to go through several drafts of this bill and of my previous bill, was the underlying concern across the country that decisions are being made for patients without any guidelines and standards. That, in my view, must stop. We must have guidelines. We must have rules. This is one of the other aspects to which this bill will, hopefully, achieve its purpose.

Let me conclude with a recommendation to committee members that they give this bill very thoughtful and very long consideration. This is not a piece of legislation that should be handled quickly. It is not a piece of legislation on which, quite frankly, they should hear from only a few witnesses. It is a bill in which everyone should engage in as broad a discussion as possible.

Honourable senators, I have chosen to have the bill go to a committee on which I do not sit. To do so would be in the best interests of this bill, although I will frequently attend the deliberations because I want to see the progress of this bill through the Senate.

With those few remarks, honourable senators, I hope we can move this bill on to committee.

**Hon. Eymard G. Corbin:** Honourable senators, I have a question for the Honourable Senator Carstairs. Will this bill be referred to the Standing Senate Committee on Legal and Constitutional Affairs?

**Senator Carstairs:** Yes.

**Senator Corbin:** Is there any merit in asking the committee to postpone its study until such time as the subcommittee reviewing

the report entitled “Of Life and Death” has concluded its study, or is the honourable senator insisting that the study by the Legal and Constitutional Affairs Committee proceed concurrently with our current study? I am a little worried. I can always read the record, but I should like to be able to participate in both discussions. Given my workload, however, that may be impossible. Senator Carstairs also indicated an obvious interest. Does she have any thoughts with respect to the timing of the study?

**Senator Carstairs:** Honourable senators, I thank Senator Corbin for that question.

So that all honourable senators know what is happening, the Standing Senate Committee on Social Affairs, Science and Technology has formed itself into a subcommittee which is examining all the unanimous recommendations of the report of the special Senate committee entitled “Of Life and Death.” Some of those unanimous recommendations cross-reference this bill. Senator Corbin has made a good suggestion that some preliminary examination take place first — that is, if the Standing Senate Committee on Legal and Constitutional Affairs has time to put things together. I have no objection to the Legal and Constitutional Affairs Committee waiting to deal with this bill until the final report of our subcommittee is made, which is due on June 6. We are trying very hard to make that deadline because it would be the fifth anniversary of the report. However, I have no difficulty with the committee putting off final deliberation, if not complete deliberation, until we have received the subcommittee’s report. This bill is too important to be rushed. We have waited this long. If the testimony currently before the subcommittee would be of use and of value to the committee studying the bill, then by all means delay that study until we have completed our report.

Motion agreed to and bill read second time.

REFERRED TO COMMITTEE

**The Hon. the Speaker:** Honourable senators, when will this bill be read the third time?

On motion of Senator Carstairs, bill referred to the Standing Senate Committee on Legal and Constitutional Affairs.

• (1510)

## DIVORCE ACT

BILL TO AMEND—SECOND READING—DEBATE ADJOURNED

**Hon. Anne C. Cools** moved the second reading of Bill S-12, to amend the Divorce Act (child of the marriage).

She said: As honourable senators can see very clearly, Bill S-12 is an act to amend the Divorce Act (child of the marriage). Honourable senators will recall that this bill has its origins in Bill C-41 and the debate in this chamber on the question of Bill C-41.

It had been my intention to proceed more fully today. However, in view of the time and in view of the fact that I have already been on my feet for a considerable period of time, I propose to adjourn the debate and speak more fully to Bill S-12 at a later time. Before doing that, however, I should like to say that if I had to dedicate this bill to any individual, I would dedicate it to the former senator Duncan Jessiman.

On motion of Senator Cools, debate adjourned.

### CRIMINAL CODE CORRECTIONS AND CONDITIONAL RELEASE ACT

BILL TO AMEND—SECOND READING—ORDER STANDS

On the Order:

Resuming debate on the motion of the Honourable Senator Cools, seconded by the Honourable Senator Watt, for the second reading of Bill C-247, to amend the Criminal Code and the Corrections and Conditional Release Act (cumulative sentences).—(*Honourable Senator Di Nino*).

**Hon. Consiglio Di Nino:** Honourable senators, I understand a question was asked yesterday by the Honourable Senator Prud'homme as to when I will address this bill. I plan to address it next week, likely on Thursday.

Order Stands.

[Translation]

### TRANSPORT AND COMMUNICATIONS

COMMITTEE AUTHORIZED TO STUDY POLICY ISSUES FOR THE  
21ST CENTURY IN COMMUNICATIONS TECHNOLOGY

**Hon. Lise Bacon,** pursuant to notice given February 22, 2000, moved:

That the Standing Senate Committee on Transport and Communications be authorized to examine and report upon the policy issues for the 21st century in communications technology, its consequence, competition and the outcome for consumers, and

That the Committee submit its final report no later than June 15, 2001.

Motion agreed to.

[English]

### CRIMINAL CODE

BILL TO AMEND—MOTION TO REINSTATE TO  
ORDER PAPER ADOPTED

**Hon. Raymond J. Perrault,** pursuant to notice of February 22, 2000, moved:

That, notwithstanding rule 27(3), the Order of the Day for the second reading motion of Bill S-11, An Act to amend the Criminal Code to prohibit coercion in medical procedures that offend a person's religion or belief that human life is inviolable, a public bill, be now restored to the *Order Paper* for the purpose of reviving the bill.

Motion agreed to.

The Senate adjourned until tomorrow at 2 p.m.





# CONTENTS

Wednesday, February 23, 2000

	PAGE		PAGE
<b>SENATORS' STATEMENTS</b>		Senator Hays .....	699
<b>askatchewan</b>		<b>The Senate</b>	
askatoon—Tragic Deaths in Aboriginal Community, Senator Chalifoux .....	694	Motion to Establish Office of Children's Environmental Health— Response of Government, Senator Spivak .....	699
<b>health</b>		Senator Boudreau .....	699
uebec—Nursing Crisis, Senator Pépin .....	694	<b>Foreign Affairs</b>	
<b>Canada-Russia Parliamentary Group</b>		Civil War in Sudan—Intention of Government to Take Issue to United Nations Security Council—Request for Details.	
nnouncement of Meeting, Senator Prud'homme .....	695	Senator Andreychuk .....	699
		Senator Boudreau .....	699
<b>QUESTION PERIOD</b>		<b>Visitors in the Gallery</b>	
<b>Intergovernmental Affairs</b>		The Hon. the Speaker .....	700
larity Bill—Divisibility of Provinces, Senator Murray .....	695	<b>Business of the Senate</b>	
Senator Boudreau .....	695	Point of Order. ....	700
<b>Human Resources Development</b>		Senator Gauthier .....	700
illennium Scholarship Foundation—Disbursement of Funds As Between Operational Expenses and Grants.		Senator Kinsella .....	700
Senator Cochrane .....	695	Senator Hays .....	701
Senator Boudreau .....	695	Senator Taylor .....	701
b Creation Programs—Possible Mismanagement of Funds— Effect on Officials of Department, Senator Angus .....	696	Senator Cools .....	701
Senator Boudreau .....	696	<b>Aboriginal Peoples</b>	
b Creation Programs—Possible Mismanagement of Funds— Response of Government, Senator Angus .....	696	Notice of Motion to Authorize Committee to Permit Electronic Coverage, Senator Austin .....	702
Senator Boudreau .....	696		
<b>National Defence</b>		<b>ORDERS OF THE DAY</b>	
use of Gulf War Syndrome, Senator Forrestall .....	697	<b>Medical Decisions Facilitation Bill (Bill S-2)</b>	
Senator Boudreau .....	697	Second Reading, Senator Cools .....	702
use of Gulf War Syndrome— Possibility of Independent Inquiry, Senator Forrestall .....	697	Senator Roche .....	705
Senator Boudreau .....	697	Senator Carstairs .....	705
<b>The Budget</b>		Senator Corbin .....	706
Request for Details on Initiatives for Atlantic Provinces.		Referred to Committee. ....	706
Senator DeWare .....	698	<b>Divorce Act (Bill S-12)</b>	
Senator Boudreau .....	698	Bill to Amend—Second Reading—Debate Adjourned.	
<b>Industry</b>		Senator Cools .....	706
Shipbuilding—Possibility of Initiatives in Upcoming Budget.		<b>Criminal Code</b>	
Senator DeWare .....	698	<b>Corrections and Conditional Release Act (Bill C-247)</b>	
Senator Boudreau .....	698	Bill to Amend—Second Reading—Order Stands.	
<b>The Senate</b>		Senator Di Nino .....	707
Motion to Establish Office of Children's Environmental Health— Response of Government, Senator Spivak .....	699	<b>Transport and Communications</b>	
Senator Boudreau .....	699	Committee Authorized to Study Policy Issues for the 21st Century in Communications Technology, Senator Bacon .....	707
<b>Business of the Senate</b>		<b>Criminal Code (Bill S-11)</b>	
Senator Kinsella .....	699	Bill to Amend—Motion to Reinstate to Order Paper Adopted.	
		Senator Perrault .....	707





*If undelivered, return COVER ONLY to:*  
Public Works and Government Services Canada —  
Publishing  
45 Sacré-Coeur Boulevard,  
Hull, Québec, Canada K1A 0S9



CANADA

# Debates of the Senate

---

2nd SESSION •

36th PARLIAMENT •

VOLUME 138 •

NUMBER 32

---

OFFICIAL REPORT  
(HANSARD)

**Thursday, February 24, 2000**



---

THE HONOURABLE GILDAS L. MOLGAT  
SPEAKER



## CONTENTS

(Daily index of proceedings appears at back of this issue.)

---

*Debates*: Chambers Building, Room 943, Tel. 996-0193

Published by the Senate

Available from Canada Communication Group — Publishing, Public Works and  
Government Services Canada, Ottawa K1A 0S9,

Also available on the Internet: <http://www.parl.gc.ca>





## THE SENATE

Thursday, February 24, 2000

The Senate met at 2:00 p.m., the Speaker in the Chair.

Prayers.

### BUDGET SPEECH

#### ACCOMMODATION FOR SENATORS IN COMMONS GALLERY

**The Hon. the Speaker:** Honourable senators, I should like to remind you that Monday will be budget day. I have sent a notice to everyone that the budget will be introduced at 4:00 p.m. However, in case it did not reach each senator individually, the section of the gallery in the House of Commons that is reserved for the Senate will be reserved for senators only on a first-come, first-served basis. As space is limited, this is the only way we can ensure that those senators who wish to attend can do so.

### SENATOR'S STATEMENT

#### NATIONAL CAPITAL COMMISSION

##### MANDATE

**Hon. Marjory LeBreton:** Honourable senators, in December 1999, we received an expensive-looking coffee table book entitled *A Place for Canadians, A Story of the National Capital Commission*, which included messages from the Prime Minister, plugging his idol Sir Wilfrid Laurier, from Minister Copps, talking about bringing Canadian together, and from the chairman, Mr. Beaudry, following along with the same theme.

**The Hon. the Speaker:** Honourable senators, could we have order, please, so that we can hear the Honourable Senator LeBreton. I know a number of senators have urgent matters to discuss. Please discuss them outside the chamber so that we can hear those who are in the chamber and who wish to speak.

**Senator LeBreton:** Thank you, Your Honour. Perhaps my honourable friends did not want to hear this.

A quick read of the book reveals a decided Liberal bias. I set it aside as there are only so many Liberal windmills that one can tilt at. That ended when I read this morning's *Ottawa Citizen*.

Honourable senators, what is going on around here? Why is it that the chairman and staff of the NCC would hold a "private briefing" for Liberal MPs in the National Capital Region? Does no one else count? Only when one of the MPs talked to the media did the NCC quickly release some of the details to *The Ottawa Citizen*.

The book should have been more properly named, "A Place for Liberals, A Story of the NCC." May I remind the NCC of its mandate statement, which is listed on the Government of Canada Info Source Web site and states:

The NCC carries out its mandate under authority of the National Capital Act. The objectives and purpose of the NCC are to prepare plans for, and assist in the development, conservation and improvement of the National Capital Region, in order that the nature and character of the seat of the Government of Canada may be in accordance with its national significance. The NCC received a new and expanded mandate from Cabinet in 1988: to make the Capital a meeting place for all Canadians, to use the Capital to communicate Canada to all Canadians, and to safeguard and preserve its assets.

Honourable senators, the NCC's secretive style has been the source of understandable concern. They now compound the problem by being selectively secret. On behalf of all non-Liberal Canadians, I demand an apology from the National Capital Commission.

### ROUTINE PROCEEDINGS

#### INTERNAL ECONOMY, BUDGETS AND ADMINISTRATION

##### FOURTH REPORT OF COMMITTEE PRESENTED

**Hon. Bill Rompkey,** Chair of the Standing Committee on Internal Economy, Budgets and Administration, presented the following report:

Tuesday, February 22, 2000

The Committee on Internal Economy, Budgets and Administration has the honour to present its

##### FOURTH REPORT

Your Committee recommends the adoption of a Supplementary Estimate of \$1,200,000 for fiscal year 1999-2000. This amount is an Operating Budget Carry Forward. Like Government departments, the Senate is allowed to carry forward up to 5 per cent of its unspent approved funds from previous years.

This Supplementary Estimate is requested to fund unanticipated expenses. As the Main Estimates are prepared 12 to 18 months in advance, a number of special studies being undertaken by Senate Committees which involve Committee travel, will be funded by this Supplementary Estimate.

Funds are also included to cover personnel costs with respect to research services for Senators Offices and the Senate Hansard Reporting Branch.

Respectfully submitted,

WILLIAM ROMPKEY  
*Chair*

• (1410)

**The Hon. the Speaker:** Honourable senators, when shall this report be taken into consideration?

**Senator Rompkey:** Honourable senators, with leave, later this day.

**The Hon. the Speaker:** Honourable senators, what is the wish of the Senate with regard to "later this day"? Is it at the end of proceedings of the day, that is, after private members' business? What is the wish of the Senate in that regard?

**Hon. Dan Hays (Deputy Leader of the Government):** Honourable senators, in response to the Speaker's question, when we receive requests to consider reports later the same day, and if leave is granted, I suggest that they be considered at the beginning of Reports of Committees. I understand that that has been a practice in the past, unless otherwise agreed. Perhaps you will recall an occasion when the Deputy Leader of the Opposition reminded me of an agreement with him which resulted in the matter being called at the end of the Order Paper.

In any event, just to repeat, reports of committees, where leave is granted to place them on the Order Paper to be heard later the same day, should be placed at the top of items on the Order Paper that relate to that business, in this case, Reports of Committees.

**Hon. Noël A. Kinsella (Deputy Leader of the Opposition):** Honourable senators, when leave is requested, any honourable senator is able to deny that leave. The difficulty of jumping the queue is that it creates problems for honourable senators who have items under a heading which contains a group of similar items. That honourable senator has a right to expect that the Order Paper will be followed, and accordingly to be prepared for the item to be called at the proper interval on the Order Paper. The risk there is that leave will not be granted because of the effect it will have on the order of items. Perhaps it would be a better practice to call the item after items under Motions have been concluded, if leave has been granted.

**Senator Hays:** Honourable senators, I have no objection to the suggestion of my honourable friend. Perhaps we need to deal with these matters on a case-by-case basis. I hear the suggestion that the practice be that such items go to the end of Orders of the Day, and I am in agreement with that, if leave is granted, as requested by Senator Rompkey.

**The Hon. the Speaker:** Honourable senators, do I understand, then, that it is agreed that if leave is granted and the item proceeds, it will appear at the end of the day's proceedings, just before adjournment?

**Senator Hays:** No, Orders of the Day.

**Senator Kinsella:** No, after Motions.

**The Hon. the Speaker:** Motions come just before the adjournment, so let us be clear on when I am expected to call the order. Is it the understanding, then, that it will be at the very end of the day's proceedings just before adjournment?

**Hon. Senators:** Agreed.

**The Hon. the Speaker:** Is leave granted, honourable senators?

**Hon. Senators:** Agreed.

**The Hon. the Speaker:** Leave is granted. Would you proceed to move the motion, please, Senator Rompkey?

**Senator Rompkey:** Honourable senators, I so move.

**The Hon. the Speaker:** It is moved by the Honourable Senator Rompkey, seconded by the Honourable Senator Finnerty, that, with leave of the Senate and notwithstanding rule 58(1)(h), the report be placed on the Orders of the Day for consideration later this day. Is it agreed?

**Hon. Senators:** Agreed.

Motion agreed to and report placed on the Orders of the Day for consideration later this day.

#### FIFTH REPORT OF COMMITTEE PRESENTED

**Hon. Bill Rompkey,** Chair of the Standing Committee on Internal Economy, Budgets and Administration, presented the following report:

Thursday, February 24, 2000

The Committee on Internal Economy, Budgets and Administration has the honour to present its

#### FIFTH REPORT

Your Committee has examined and approved the Senate Estimates for the fiscal year 2000-2001 and recommends their adoption.

Your Committee notes that the proposed total budget is \$52,495,900. When compared to the 1999-2000 forecasted expenditures of approximately \$50,500,000, this represents a 3.9 per cent increase. When compared to actual expenses for fiscal year 1998-1999, this amount represents 1.32 per cent increase. Expressed in constant dollars, the proposed Senate Estimates 1999-2000 are about at the same level as they were in fiscal year 1991-1992.



Barring some very unusual occurrences, supplementary estimates for 2000-2001 will not be required.

The Expenditure Plan 2000-2001 accompanies this report.

Respectfully submitted,

WILLIAM ROMPKEY  
*Chair*

**The Hon. the Speaker:** Honourable senators, when shall this report be taken into consideration?

**Senator Rompkey:** Honourable senators, with leave, later this day.

**The Hon. the Speaker:** Is leave granted, honourable senators?

**Hon. Senators:** Agreed.

**The Hon. the Speaker:** Is it your pleasure, honourable senators, to adopt the motion?

**Hon. Senators:** Agreed.

Motion agreed to and report placed on the Orders of the Day for consideration later this day.

## BUSINESS OF THE SENATE

**The Hon. the Speaker:** Government Notices of Motions.

**Hon. Dan Hays (Deputy Leader of the Government):** Honourable senators, I request leave of the Senate to revert to Government Notices of Motion for purposes of dealing with the adjournment motion later today.

**The Hon. the Speaker:** Is leave granted, honourable senators?

**Hon. John Lynch-Staunton (Leader of the Opposition):** Honourable senators, is this a debatable motion? I have a question.

**The Hon. the Speaker:** A question can be asked when leave is granted.

**Senator Lynch-Staunton:** My question follows on Senator Murray's question of a week ago today. What is the government business that brought us back this week? What government business brings us back next week if we are to come back next week? We are suffering through an extraordinary lack of government business. Were it not for the private bills from both sides, the inquiries and motions, there would be absolutely no reason for this place to sit. I see nothing that we are doing or have been doing for the last two weeks which is of direct benefit to the Canadian people. What are we doing here? I have a whole list of bills that were promised and have yet to come. Since the beginning of this session, we have only had one Royal Assent, and that was for two bills.

Honourable senators, I know you want me to get to my question, so I will. Perhaps the answer will allow another question. What will we be doing next week in terms of government business?

**Senator Hays:** Honourable senators, I gather that the question is directed to me and that it is in order for me to answer as best I can. The best information I had last week was that we would have bills this week, and I mentioned that in answer to a question put by Senator Murray, namely Bill C-10 and Bill C-13.

It would appear that the only bill we will get next week is Bill C-2, the Elections Act, which is an important piece of government business. I am happy to say it will be brought before the Senate next week. However, as was the case last week, when Bill C-10 and Bill C-13 did not arrive, the same could happen with Bill C-2. That is the best information I have, and that is the basis on which I am suggesting an adjournment to the usual sitting time of two o'clock on Tuesday.

In terms of our business this past week and Senator Lynch-Staunton's comment, I am not sure that he meant to say that we did nothing of direct benefit to Canadians. I think we did. We have had a busy week, as he observed, with Senate public bills. Many of them have moved into committee, I am pleased to observe, and I thank honourable senators for their cooperation in seeing that happen. Accordingly, our committees are busy. We may have short sitting days next week in that we will be waiting until Thursday, I assume, for second reading speeches on Bill C-2, the Elections Act. In any event, that is the answer to the question, and that is why we have adjourned until Tuesday of next week.

• (1420)

**Senator Lynch-Staunton:** Honourable senators, it is not for me to determine the government's agenda, but the government would be wise to realize that there is not much for us to do here in the chamber. The Senate could adjourn for the next two or three weeks, let the committees continue with their work and then, when there is substantial government legislation before us, call us back.

I would not say we are spinning our wheels. However, our prime responsibility is to assess government legislation, and there is nothing before us. There may be some before us next week, but then there is a week's break after that. Call us back when the government has something on its plate. Do not call us back just to have us here, in effect, not doing anything too constructive.

**The Hon. the Speaker:** Honourable senators, is leave granted?

**Hon. Senators:** Agreed.

**The Hon. the Speaker:** It is agreed that we will revert later this day to Government Notices of Motions for purposes of the adjournment motion.

## ENERGY, THE ENVIRONMENT AND NATURAL RESOURCES

### NOTICE OF MOTION TO AUTHORIZE COMMITTEE TO EXTEND DATE OF FINAL REPORT ON STUDY OF MATTERS RELATED TO MANDATE

**Hon. Mira Spivak:** Honourable senators, I give notice that Tuesday next, February 29, 2000, I will move:

That notwithstanding the order of the Senate adopted on December 1, 1999, the Standing Senate Committee on Energy, the Environment and Natural Resources, in accordance with rule 86(1)(p), which was authorized to examine such issues as may arise from time to time relating to energy, the environment and natural resources generally in Canada, be empowered to submit its final report no later than June 30, 2001.

## QUESTION PERIOD

### AGRICULTURE AND AGRI-FOOD

#### FARM CRISIS IN SASKATCHEWAN AND MANITOBA— ADEQUACY OF ADDITIONAL AID PROGRAM

**Hon. Leonard J. Gustafson:** Honourable senators, I rise with a question in regard to agriculture. I come here today both pleased and dejected. I am pleased because finally the Prime Minister has come to the table. It took a year and a half, but finally he is there. He has made a statement on agriculture.

I am dejected because the amount of money that he brought to help farmers is insignificant. According to the Premier of Manitoba, it will amount to something like \$8,000 per farmer.

A very serious situation exists in agriculture. The increase in the cost of fuel alone will be more than \$8,000 per farmer. That is just for the fuel that farmers have to put in their equipment.

The whole situation of commodity prices is ignored. It will take a couple of billion dollars of real cash every year to deal with commodity prices that have dropped by 50 per cent in some cases.

The next federal budget is approaching. I know the answer will be that the government leader cannot tell us what is and is not in the budget, but we have been hearing leaks for the last week and a half. We know that health care will be addressed in the budget and so on. Honourable senators on both sides of the chamber have been very good in handling the agriculture issue, but I am most disappointed with the way members of the House of Commons have handled the issue. They have been all over the place. That is probably one reason the Prime Minister has not dealt with the issue until now. This matter will take some real money to solve because it is a serious national issue. Will the

Leader of the Government in the Senate again carry that message to the cabinet?

**Hon. J. Bernard Boudreau (Leader of the Government):** Honourable senators, I am thankful for the opportunity to respond. I wish to thank honourable senators on both sides for their contributions in Question Period and in debate in this chamber on this very important issue.

This is a good-news day for the farmers of Manitoba and Saskatchewan. On the other hand, I do not think anyone would suggest that this news solves all the problems or that we need not have further concerns. This program represents substantial action on behalf of all three governments, but particularly on behalf of the federal government.

The cost-shared program announced today — 60 per cent federal and 40 per cent provincial — will add an additional \$400 million to address the issues of the grain farmers in those two provinces specifically, a significant new measure.

I was trying to calculate the total amount. I have a note here indicating that since December 1998, \$2.31 billion of assistance has been announced for the farmers of our country. The announcement generally has been regarded by the two premiers involved as a good-news story.

I want to conclude by quoting, first, Premier Romanow. I was glad to see him come to the table because we discussed here the need for both sides to come to participate. Premier Romanow was quoted in a press release as saying:

The assistance announced today, along with funds from other federal-provincial safety nets, will provide substantial help to Saskatchewan farmers in producing the 2000 crop.

I think we must recognize that statement.

The same press release states:

Premier Doer said it was heartening that the federal government has acknowledged in this concrete way the severity of the farm income crisis. "It's a good day for the family farm."

I would agree with Premier Doer that this is good and substantial news. However, it is not the whole answer. With that in mind, I will, as I have in the past, relay to the government the comments of the honourable senator and other honourable senators on this very important issue.

**Senator Gustafson:** Honourable senators, the \$2 billion the honourable senator mentions is over three years. When that is broken down, it is not much money. Other things need to be done if we are to save the farmers from bankruptcy.

**Senator Taylor:** It would help if we had a good crop year.

**Senator Gustafson:** That would help. If we have a drought, God help us.



FARM CRISIS IN PRAIRIE PROVINCES—REQUEST FOR LENIENCY  
IN FARM CREDIT CORPORATION LOAN GUIDELINES

**Hon. Leonard J. Gustafson:** Honourable senators, the Farm Credit Corporation must take a serious look at the plight of the farmers who are in trouble. I have had farmers visit my office here in Ottawa, as I am sure many senators and members of the House of Commons have, too. The farmers tell us how many dollars they need to sustain their farms and to deal with their debts. One farmer said it would take \$200,000. That means real help and real changes are needed in many areas. Farm credit is one of the areas where the government can offer farmers a break, especially to those who are hurting.

• (1430)

Would the minister convey the urgency of this matter to the cabinet and ask for some exceptional movement in terms of farm credit? The farmer who is hurting today is being told by the Farm Credit Corporation that he must have \$20,000 by a certain date or else face foreclosure. That is what is happening.

Could the minister please convey to cabinet the necessity for leniency in the guidelines of the Farm Credit Corporation?

**Hon. J. Bernard Boudreau (Leader of the Government):** Honourable senators, the announcement that was made earlier today contains matters other than simply an additional \$400-million figure. As substantial as that is, other issues arising from this announcement represent potentially good news. One is the agreement by two provincial governments to continue their participation in the 1999 AIDA program. That represents a reversal of position on behalf of the Province of Saskatchewan. It is useful to have them once again committed, financially and otherwise, to the Agricultural Income Disaster Assistance program.

There was also an agreement by all three governments to review that program and other safety net programs to ensure that all funding is received in an efficient way by the people who need it the most.

The other potentially positive long-term effort is to aggressively pursue the price-distorting subsidies offered by the United States and the European Economic Community.

There are other initiatives now underway, as of today, which can be considered good news. Again, I will undertake to convey the honourable senator's views on farm credit and other potential action to the Minister of Agriculture. I undertake to do that at my first opportunity.

**Hon. A. Raynell Andreychuk:** Honourable senators, I am also pleased that there is now a response on the farm crisis from the federal government. However, I wish to underscore what Senator Gustafson has said. These discussions have gone on for almost a year and there are already farmers for whom help is too late. Perhaps we can assist them with job retraining or resettlement. There are people in that category throughout Saskatchewan and they are leaving Saskatchewan. That troubles me from the point of view of Saskatchewan's long-term viability.

Will the Leader of the Government in the Senate provide an undertaking that something will be done for those farmers who are just at the breaking point and who are making the decision of whether to seed or abandon their farms? Will there be measures implemented to ensure that the Farm Credit Corporation does not move in on them? That corporation is moving in on people daily. Can the Leader of the Government offer something that does not repeat the words "review" or "assess" that he has used in the past? Those words killed us in the AIDA program. We need action.

It is my hope that these new measures will be implemented quickly and will not falter in the morass of bureaucracy. That is the message I ask the minister to bring back to cabinet, that it is not only the intent but the implementation that failed in AIDA and the other programs.

**Senator Boudreau:** Honourable senators, the Honourable Senator Andreychuk raises matters of concern that were raised in debate on both sides of this chamber. The \$400-million program is designed to reach farmers quickly so that it will impact on this year's planting program.

I have not had much time to review the details of the program, but as I understand it, the provincial governments will conduct the administration of the program in an effort to deliver results and money expeditiously.

As well, the two provincial governments of Manitoba and Saskatchewan and the federal government have a renewed commitment to review in an expeditious fashion the entire character of safety net programs for farmers in this country. There is an added impetus to do so now. We have a significant amount of momentum as a result of the agreement today.

I am hopeful that the money announced today will be received quickly by farmers and that renewed negotiations will proceed with a new momentum.

**Senator Andreychuk:** I hope the leader will underscore what the farmers have been saying to me. This is not just about losing one's livelihood and one's job. It is about losing one's home. A farmer loses his entire life when he must move from his farm. That is why this is a plea of urgency.

**Senator Boudreau:** I appreciate the serious aspect of these issues. I believe the Minister of Agriculture appreciates that as well, which is why we were careful, as a government, to ensure that the farmers received this assistance quickly.

FARM CRISIS IN SASKATCHEWAN AND MANITOBA—  
FLOODING PROBLEM IN BORDER REGION—  
COVERAGE UNDER ADDITIONAL AID PROGRAM

**Hon. Terry Stratton:** Honourable senators, my question is directed to the Leader of the Government in the Senate. Does the money that was announced today apply to the farmers who were flooded out in southwestern Manitoba and southeastern Saskatchewan?

**Hon. J. Bernard Boudreau (Leader of the Government):** Honourable senators, the program announced today will apply generally to farmers in Saskatchewan and Manitoba. One assumes that the money would apply to those farmers as well.

**Senator Stratton:** Last week, I raised the issue of these farmers being flooded out and that they were not able to plant crops to a large degree. Their fields are loaded with weeds, and it will take extraordinary measures to get them back on stream.

I reported last week that some farmers are falling between the cracks with regard to aid. It does not matter what program is there; they do not meet the requirements. As a result, there is no extraordinary help for them. These farmers do not have money to plant. While this announcement will help in a general sense across the provinces, the new money will not help these desperate farmers specifically.

**Senator Boudreau:** If I understand the honourable senator correctly with respect to what he would describe as the extraordinary circumstances of particular farmers and the damage suffered by them, this program is not designed specifically to address that issue. This program addresses the general issue of funding and those specific farmers will be included in the program, as will the other farmers in Saskatchewan and Manitoba. However, with respect to their particular extraordinary circumstances, that matter continues to be the subject of concern and review by the minister.

**Senator Stratton:** Will the Leader of the Government provide more information in that regard at a future date?

**Senator Boudreau:** Yes, I will do that.

#### REQUEST FOR NATIONAL FARM POLICY

**Hon. David Tkachuk:** Honourable senators, the fact that the government continues to not quite understand the agricultural problems in Western Canada is exemplified by the use of the words "by those who need it the most." These words make the program sound like a welfare payment. This government has not thought out an agricultural policy. The government does not operate that way with the marketing boards in the East. We cannot have discussions with the Americans about subsidies because of the marketing boards in Quebec and Ontario. We should not decide that one farmer will get so much for eggs because he is a small farmer and another farmer will get another amount for eggs or chickens because he is a big farmer. That is not done.

In order that all honourable senators understand, why does the government not just send the farmers in Western Canada a cheque for what consumers have to pay over market prices for all dairy products, chickens and eggs? Then we will find out who is receiving subsidies in this country, because it is not anyone in Western Canada. All we want is a national farm policy in this country that will work towards a solution to this problem.

**Hon. J. Bernard Boudreau (Leader of the Government):** Honourable senators, the leaders of three governments have expressed their pleasure at the solution advanced today. I do not know if those three leaders or others even in this place would

agree with the honourable senator's analysis with respect to some of the marketing boards.

• (1440)

In any event, this does represent a substantial step forward. It represents a very real and immediate aid to the farmers who most need it, those farmers in Manitoba and Saskatchewan. This is not a national program but a program for Saskatchewan and Manitoba. The money will reach them, and it will be essential to allowing them to continue on the farm. It has been received very well by the three leaders of government who today made the announcement.

#### FINANCE

##### BUDGET—POSSIBILITY OF SUBSTANTIAL TAX CUTS

**Hon. Michael A. Meighen:** Honourable senators, my question is directed to the Leader of the Government in the Senate.

It seems the Liberal government has devised a new process for drafting the budget this year. You leak the details in the weeks before the budget and then you gauge the public's response before coming up with a definitive answer. The Finance Minister and his officials will presumably get together this weekend and decide which of their turkeys will fly and which will not.

I understand from reading the budget papers — or should I say the newspapers — that the government is considering tax cuts, both in capital gains and marginal tax rates. Also from what I am reading, and from what people are telling me and telling the Banking Committee, the cuts proposed on the piecemeal basis simply are not enough to make any real difference.

As the Leader of the Government in the Senate is no doubt aware, Canadians across the country, including such eminent economists as John McCallum of the Royal Bank and Jack Mintz from the C.D. Howe Institute, have also spoken out urging drastic cuts in our tax rates. Indeed, Mr. McCallum, you will recall, went so far as to say that we would be in danger of reducing our standard of living by 50 per cent, as compared to the United States, if something substantial is not done.

Honourable senators, my question is very simple. If the government was looking for feedback, I think you have it now. Will the minister make representations to his colleague the Minister of Finance not to proceed on a piecemeal basis but to exhibit some real financial and fiscal leadership and make substantial cuts in our tax rates?

**Hon. J. Bernard Boudreau (Leader of the Government):** Honourable senators, I suspect the budget is in the can at this stage and the deliberations which the Minister of Finance has undertaken over many months now have been crystallized into a budget speech, which we all await anxiously on Monday. The government has not made any secret of its intention, as part of its overall program, to reduce taxes. That is what part of the surplus in government will be used for. As to precisely what form and to what degree, that is what budget speeches are for, and we all look forward to hearing those details on Monday.



Honourable senators, some may wish to hold their criticism until they are aware of the nature of the document, while others are tempted to criticize in advance. However, for those people in the banks, who have done very well this year, I might also point out that the economy has done very well. The real GDP growth in the last quarter stands at 4.7 per cent. That is incredible. At the same time, the inflation rate has decreased to where it is comfortably within the Bank of Canada range of 1 to 3 per cent. On both of those performance indicators, I think we are doing very well.

**Senator Meighen:** Honourable senators, I do not deny that we are doing reasonably well. What I do say to the Honourable Leader of the Government is that we can do much better with a little more courageous leadership. As the minister is well aware, countries as disparate as the United States, the United Kingdom, Germany, Japan, Ireland, Australia, and those bastions of red-neck capitalism, Finland and Sweden, have all reduced their tax rates substantially.

Honourable senators, you no doubt saw the report in this morning's paper that \$135 billion in investment has been lost to foreign markets over the past 10 years. If we are to make any real difference in the future, and to do more than just get along, then we need substantial tax cuts. This morning, yet another witness indicated before the Banking Committee that capital gains was by far the best cut that can be made in order to generate a multitude of economic activities.

Honourable senators, we cannot expect to make a substantial difference by tinkering with our tax rates. We must keep up with our competitors. Would the Honourable Leader of the Government not agree that we must stay even with, if not do better than, our competitors?

**Senator Boudreau:** Honourable senators, Canada's growth rate in the G-8 countries over the past year or two has been almost without parallel. We are keeping pace. As a matter of fact, we are outpacing our friends when it comes to real economic growth.

Honourable senators, when I say that the GDP rose in the last quarter, that it showed growth of 4.7 per cent, that was the sixteenth consecutive monthly increase in the GDP. Together with a brief period in 1987-88, that is the longest string of uninterrupted gains since the early 1960s. The economy, therefore, is doing very well.

The honourable senator has referred to an article that says \$135 billion of investment flowed out of the country. I believe the amount flowing in over that same period was something like \$240 billion. With \$135 billion going out and \$240 billion coming in, that is not a bad deal.

**Senator Meighen:** It would have been better if the \$135 billion had stayed here.

## NATIONAL DEFENCE

### PARTICIPATION IN ANTI-SUBMARINE EXERCISE IN IONIAN SEA

**Hon. J. Michael Forrestall:** Honourable senators, there is a major anti-submarine warfare exercise taking place now in the Ionian Sea, between Italy and Greece called "Dogfish 2000". France, Greece, Germany, Turkey, Italy, the Netherlands, Spain, Norway, Portugal, the United Kingdom, and the United States are there. Canada is not listed as a participant. When we are committed to the standing force in the Mediterranean, and when we have some 2,000 troops in the Balkans, why are we not participating in this very important exercise? Is there a specific reason why Canada is not there?

**Hon. J. Bernard Boudreau, Leader of the Government:** Honourable senators, I have no idea whether there is a specific reason. I can certainly inquire and if there is a specific reason that would not breach national security if we shared it, then I would certainly be prepared to bring that information to the Senate.

However, the resources of the Armed Forces are not inexhaustible, as the honourable senator knows and has pointed out on many occasions here in this chamber. The resources are very limited, and at this time in our history we have more of our Armed Forces serving overseas, I am told, than at any time since the Korean War. Therefore, we are stretched with our resources. Our personnel are doing a wonderful job serving their country and the world in those many locations. However, with this increased commitment in various trouble spots around the world, we need to be judicious in how we spread our forces in other areas.

**Senator Forrestall:** Honourable senators, surely we all know what happens to woollen socks when you boil them in hot water. They shrink, of course.

Why were we not invited to participate in this exercise? Perhaps the leader would try to find out, and I am sure many senators would appreciate that. Is it because there was not, as he suggests, enough money in the defence budget? Were we not asked to attend? Were we not invited because of the repeated unreliability of the Sea King helicopters?

• (1450)

**Senator Boudreau:** Honourable senators, I do not know whether we were invited. I can ask that question. If we were not invited, I do not know why. I shall ask that question as well.

I certainly believe that the international community has a great deal of confidence in the ability and the capability of the Canadian Armed Forces, since they continually invite us to participate in dealing with some of the most difficult areas of the world. I refer to places such as Kosovo, East Timor and others. When they look to ask armed forces to participate, one of the first doors at which they come calling is Canada's. It is with good reason. We are able to perform our responsibilities in a highly professional and dedicated way.

## CONTRIBUTION TO EFFORTS TO END WAR IN KOSOVO

**Hon. John Lynch-Staunton (Leader of the Opposition):** Honourable senators, will the Leader of the Government tell us that our participation in the Kosovo experience led to a successful conclusion?

**Hon. J. Bernard Boudreau (Leader of the Government):** Honourable senators, whether or not conclusions are ultimately successful in any of the trouble spots, the question is whether or not we have performed well. I have no doubt, and I say so without hesitation, that our forces performed exceptionally well, not only to bring pride to all Canadians but, indeed, to make a positive contribution in the area in which they served.

**Senator Lynch-Staunton:** The purpose of the Kosovo exercise was to bring an end to a civil war and ethnic cleansing. There is terrible rivalry and even war between two major ethnic groups. I do not think that that has been achieved. What has been Canada's contribution to this end?

**Senator Boudreau:** Honourable senators, Canada's contribution has been positive. I believe that Canada's presence there has been positive in efforts to save lives, to protect civilians and to bring a measure of peace and at least security to the area. These are difficult and complicated problems which have existed in that area of the world probably since before the First World War. A great deal of effort will be required before a final solution is brought to bear. However, in the meantime, Canadians and our Armed Forces are making a positive contribution all over the world.

## DELAYED ANSWERS TO ORAL QUESTIONS

**Hon. Dan Hays (Deputy Leader of the Government):** Honourable senators, I have a response to a question raised by Senator Cohen on February 10, 2000 regarding the appointments to the governing council of the Canadian Population Health Initiative; a response to a question raised by Senator Di Nino on February 10, 2000 regarding the program to tighten security concerning terrorist activities; and a response to a question raised by Senator Stratton on February 16, 2000 regarding the farm crisis in Prairie provinces, in particular the flooding problem in Manitoba and Saskatchewan.

## HEALTH

APPOINTMENTS TO GOVERNING COUNCIL OF  
THE POPULATION HEALTH INITIATIVE

*(Response to question raised by Hon. Erminie J. Cohen on February 10, 2000)*

The Canadian Population Health Initiative (CPHI) is a national policy research initiative, focused on population health, that forms part of the Health Information Roadmap Initiative, announced in the February 1999 Federal Budget.

The initiative is housed within the Canadian Institute for Health Information (CIHI) and the CPHI Council was

established as a committee of the CIHI Board. The Council provides leadership and co-ordination to the CPHI in achieving its vision of creating knowledge and enhancing Canadians' understanding about health and its broad determinants, and supporting the understanding of policy relevant research leading to improvement of the health and well-being of Canadians.

The first CPHI Council is comprised of 11 members, including a Chair, selected from among accomplished Canadians representing diverse interests across the population health field and regions of Canada.

Individuals with specific knowledge, expertise, wisdom and credibility were selected based on contributions they have made to the population health field in areas related to CPHI's key functions. They come from a wide range of domains including universities and research institutes; public, private and voluntary sectors; education; and non-governmental organizations. The group was selected to represent the various regions of Canada, in addition to the balance between the research and policy communities. Other factors considered included gender, aboriginal and Francophone representation.

The CPHI governance model calls for a Council with regional representation rather than representation from each province and territory. However, it does link geographically diverse players from the provinces and territories within a pan-Canadian network of expertise on population health research and analysis. Of the current projects underway, both the Atlantic Center for Policy Research, University of New Brunswick, and the Population Health Research Unit, Dalhousie University, are very active as research centers within the CPHI network. The goal of CPHI is to bring other research centers from all provinces and territories, including Alberta, into the network over the coming months.

## SOLICITOR GENERAL

PROGRAM TO TIGHTEN SECURITY WITH REGARD  
TO TERRORIST ACTIVITIES—REQUEST FOR DETAILS

*(Response to question raised by Hon. Consiglio Di Nino on February 10, 2000)*

The Government is considering approaches to curb the abuse of charities by terrorist organizations and to ensure the integrity of the charities system.

It is noted that the abuse affects a very small fraction of registered charities. Any policy response will be measured and will reflect the humanitarian values of Canadians.

When the Government has proposals ready, they will be brought forward.



## AGRICULTURE AND AGRI-FOOD

### FARM CRISIS IN PRAIRIE PROVINCES—FLOODING PROBLEM IN MANITOBA AND SASKATCHEWAN

*(Response to question raised by Hon. Terry Stratton on February 16, 2000)*

The Government of Canada has made a number of changes to existing Safety Net programs to help farmers who were unable to seed due to wet weather conditions last spring.

In partnership with the Government of Saskatchewan, the Government introduced a \$50 per acre benefit for those with unseeded acres. This offer was open to the Government of Manitoba as well.

The Government extended the seeding deadlines for crop insurance.

The Government changed the Agricultural Income Disaster Assistance (AIDA) program to allow farmers to get interim payments on their 1999 benefits earlier.

The Government adjusted the Net Income Stabilization Account (NISA) program rules to permit easier access to those funds.

The AIDA program is designed to provide benefits to farmers who suffer severe income drops regardless of the circumstance. This would include farmers who are unable to seed due to wet weather.

## BUSINESS OF THE SENATE

**The Hon. the Speaker:** Honourable senators, before I call Orders of the Day, would it be agreeable to revert to Senators' Statements in order to hear the Honourable Senator Ruck who has sent me a note in that regard?

**Some Hon. Senators:** Agreed.

**Hon. John Lynch-Staunton (Leader of the Opposition):** Honourable senators, it seems to me that more and more we are straying from the rules and asking for leave. Yesterday, I found it extraordinary that an honourable senator would ask for leave to go to a point of order which had been disposed of the day before. As far as I am concerned, that has never happened before. Nonetheless, we let it go.

We are now saying because a particular senator does not arrive on time, "Let us revert back to something which accommodates his or her schedule." I disagree with that. If the statement, motion or inquiry is that important, then the senator who is asking for leave should wait until the end of the day. We have before us an agenda that is prepared ahead of time and by which most of us want to abide because we have engagements elsewhere. Thus, we assume that the chamber will be through certain items by a

certain time. Therefore, senators can accommodate themselves with whatever. We are now being asked to reverse everything because someone says, "I am sorry, I was not here on time, please revert back." Someone else says, "I was not here yesterday to talk about the point of order, let us revert back." I say, Enough is enough! If we want to revert, let us do it at the end of the regular agenda.

**The Hon. the Speaker:** Honourable senators, leave has not been granted. However, I want to make clear that in this case the fault is not the Honourable Senator Ruck's. He was in the chamber when Senators' Statements were called. The fault is mine. I had the note from him. However, I failed to call on the honourable senator.

**Senator Lynch-Staunton:** Honourable senators, on that basis I wish to withdraw any criticism I had of the honourable senator in question. What I said was not aimed at him. I would certainly allow him to speak. I thank His Honour for his explanation.

The principle of asking for leave on many occasions is poorly based. We should be a little more disciplined and abide by our agenda a little more carefully than we have in the recent past.

**The Hon. the Speaker:** Is leave granted, honourable senators?

**Hon. Senators:** Agreed.

## NATIONAL DEFENCE

### PROVISIONS OF NAVAL SERVICE ACT

**Hon. Calvin Woodrow Ruck:** Honourable senators, as an amateur military historian, I wish to make a few remarks concerning the Naval Service Act of 1910 which was passed by the government of Sir Wilfrid Laurier.

In due course, rules and regulations were drafted with respect to personnel for Canada's new navy. After a period of time, the rules and regulations stated that all recruits in the naval service must be members of the white race. That particular clause was not challenged seriously until World War II when a black gentleman from Winnipeg challenged the act. It was temporarily revised by the Naval Secretary to permit visible minority persons to serve in the navy.

My question is this: Has there been a further revision of the Naval Service Act to subsequently permit visible minorities and women to serve in the Royal Canadian Navy? We see women playing various roles. It seems to me that there is room in the Royal Canadian Navy for visible minority persons, as well as females.

**Hon. Dan Hays, Deputy Leader of the Government:** Honourable senators, I gather from Senator Ruck's statement that he is essentially asking a question.

**Senator Kinsella:** No, it is a rhetorical question.

**Senator Hays:** In that case, I will take my seat.

**The Hon. the Speaker:** Honourable senators, the note I received from Senator Ruck stated that he had some brief remarks. Perhaps we can take this as an oral question to be answered at a later date. Is that agreed, honourable senators?

**Hon. Senators:** Agreed.

[Translation]

• (1500)

## ORDERS OF THE DAY

### SIR JOHN A. MACDONALD DAY BILL

SECOND READING—DEBATE ADJOURNED

**Hon. Normand Grimard** moved the second reading of Bill S-16, respecting Sir John A. Macdonald Day.

He said: Honourable senators, Canadians are often faulted for their inexplicable modesty about the people who shaped their history. In the United States, patriotism is inescapable, in the media and on the streets, while in Canada, we can always find a good reason not to exhibit the pride our great historical figures deserve.

As a partial remedy to this, I am therefore proposing, honourable senators, that the 11th day of January each and every year be marked on the calendar as the date to honour Sir John A. Macdonald: a one-of-a-kind historical figure.

A leader of government, a builder, one of the Fathers of Confederation, he was the first of our country's twenty-one prime ministers to date.

Some history buffs may want to tell me that there is some doubt about the birthday of Sir John A. Macdonald: it could be January 10 or January 11. Some history books give one, and some the other, so they are no help. I have selected the eleventh, because that is the date that Macdonald himself celebrated. Nowadays, these things happen less often, but there was a time when a baby born at 5 minutes before or after midnight could very easily end up registered on the wrong day, which might be a good thing or a bad.

I am not proposing, with this bill you have before you, to make this a national statutory paid holiday for federal employees. I believe this would be unrealistic in Canada, where we cannot even manage, because of Quebec, to have the Queen's birthday, Victoria Day, celebrated all across Canada on the third Monday in May. What I am proposing is far more modest. We are going to create a day for recognition of Macdonald, a day when we will call to mind his exemplary contribution to Canada. January 11 will, however, be a normal working day.

Sir John A. was born in Glasgow, Scotland. When he was only five, his parents moved to Kingston, Ontario. He settled into his

new surroundings in childhood. Macdonald studied law and opened his own law office at the age of 19. He was a success and did well financially in business.

As if his career were marked by a special bent for politics, in 1844, he was elected as the member for Kingston in the Legislative Assembly of the Province of Canada. Appointed very early to the executive council, he demonstrated his flexibility by heading a number of ministries. It was, therefore, natural for his renown to lead him to serve as a delegate at the Constitutional Conference in Charlottetown in 1864 and the one in Quebec City thereafter and finally to chair the London Conference in 1867.

Without him, honourable senators, Canada as we know it would probably never have been born. An excellent politician, this party leader was clever enough to see that a unitarian government would have never brought in the French Canadians. The resentment caused by the Rebellion of 1837 in Lower Canada was still fresh. As a solution, Macdonald agreed to create a federation, in which the central government and the provinces continue today in an effort to balance their powers.

Construction of the first Parliament Buildings on the present hill had just been completed. The member for Kingston, Macdonald, became our first Prime Minister, serving from 1867 to 1873. Since he alone can claim that title, it is a great pleasure for me to introduce this bill. Furthermore, as was the fashion at the time, he headed several departments as well as the government.

Defeated by Liberal Alexander Mackenzie, Sir John A. spent time in opposition, but returned with a vengeance in 1878. He then governed the country without interruption until his death on June 6, 1891. He was, therefore, Canada's first Prime Minister for nearly 20 years.

Sir John A. Macdonald set the example of a wise head of government, and his successors had no choice but to emulate him. They followed the same milestones.

As he was a builder, a man of vision, I ask for your support, honourable senators, so that the calendar may honour his name as Canada's first Prime Minister. I add that the fact that he was a Conservative is a mere coincidence.

[English]

**Hon. Jeremiah S. Grafstein:** Honourable senators, I commend the Honourable Senator Grimard for raising this question. I have been a great admirer of the life and times of Sir John A. Macdonald. I sit at one of the many desks at which Sir John A. Macdonald apparently sat. I must say that while he was a Conservative, in the right-hand corner of the desk there is a secret compartment I consider to be the source of liberalism, which he used quite liberally throughout this entire period. In that sense, I commend the honourable senator and liberally support his resolution.

On motion of Senator Hays, debate adjourned.



## ABORIGINAL PEOPLES

### COMMITTEE AUTHORIZED TO PERMIT ELECTRONIC COVERAGE

**Hon. Dan Hays (Deputy Leader of the Government)**, for Senator Austin, pursuant to notice of February 23, 2000, moved:

That the Standing Senate Committee on Aboriginal Peoples be empowered to permit coverage by electronic media of its public proceedings with the least possible disruption of its hearings.

Motion agreed to.

• (1510)

## INTERNAL ECONOMY, BUDGETS AND ADMINISTRATION

### FOURTH REPORT OF COMMITTEE ADOPTED

The Senate proceeded to consideration of the fourth report of Standing Committee on Internal Economy, Budgets and Administration (Senate Supplementary Estimate 1999-2000) presented in the Senate earlier today.

**Hon. Bill Rompkey** moved the adoption of the report.

He said: Honourable senators, I rise today to ask you to adopt Supplementary Estimates for the fiscal year 1999-2000. The total of the Supplementary Estimates is \$1.2 million.

Like government departments, the Senate is permitted to carry forward up to 5 per cent of its unexpended approved funds from previous years. In our case, this amounts to approximately \$1.2 million of unanticipated expenses beyond our Main Estimates. Therefore, this request will be shown within the government's Supplementary Estimates — the blue book — as an operating budget carry-forward. These are funds that have lapsed in previous years and which we are claiming now as a carry-forward.

These Supplementary Estimates are required to fund two basic, unforeseen expenditures in 1999-2000: first, the expenses, including travel, of Senate committees for a number of special studies; and second, personnel costs for research services to senators' offices and the Senate Hansard reporting branch. As honourable senators will appreciate, these two things are obviously connected.

Senate committees form a lifeline for communities of interest to pursue issues of prime importance and to explore and develop federal government policy options. Some of the most effective work our committees do takes place outside of Ottawa. A number of our committees have travelled or will be travelling on fact-finding missions or as full-fledged travelling committees to allow us to hear directly from Canadians. We heard about some

of them today, including the Agriculture Committee and the Fisheries Committee, and no doubt we will be hearing more about them.

Honourable senators, allow me to give you a few examples. The Banking, Trade and Commerce Committee held hearings in Toronto last April to study the financial system in Canada, in particular equity financing for small business. The Joint Committee for the Scrutiny of Regulations undertook foreign travel in July. The Fisheries Committee will be holding meetings in New Brunswick and Îles-de-la-Madeleine in February and March, and in British Columbia from March 27 to 31. I also understand that, at a later date, they will be going to Newfoundland, and then at a much later date to Labrador, which of course, as you know, is a much different land mass. Newfoundland is that small island to the south of Labrador, so the Fisheries Committee has to go to both places.

Both the Energy and Natural Resources Committee and the Banking, Trade and Commerce Committee travelled. These trips were not planned, so we could not provide for them in our Main Estimates. They require additional funds.

When I addressed the Senate on the Estimates as Chair of Internal Economy last February, I emphasized that there were a number of key issues in our budget that we felt might be underfunded as a result of increased legislative activity. These are two areas, then, where we have to make up a shortfall.

With respect to our research budget, Internal Economy had provided for a 76 per cent entitlement rate. Utilization analysis is showing a rate of 83 per cent. Senators are working harder than we had anticipated.

The Debates Branch is also underfunded, and therefore Supplementary Estimates in the amount of approximately \$127,000 are required to cover this shortfall. I am sure the people in Hansard will be pleased to know that.

In order to achieve greater accountability, transparency, economy and value for taxpayers, we are managing with budgets that present minimal expenditures with very modest increases while costs continue to rise. Everyone wants more for less, and so it should be. We plan to spend the very minimum necessary to function effectively and to serve Canadians to the best of our ability; but we must function effectively and serve Canadians, and that costs money.

That means we must use Supplementary Estimates to fund what was not, or could not be, planned with certainty. At the same time, we must continue to plan more effectively. Next year, we intend to establish an even more realistic budget in order that future requests for Supplementary Estimates will not be necessary.

Honourable senators, your Internal Economy Committee recommends that you approve this request for Supplementary Estimates for the fiscal year 1999-2000 in the amount of \$1.2 million.

**Hon. Marcel Prud'homme:** Honourable senators, there is a word that seems always to excite Mr. Aubry from *The Ottawa Citizen* and others, and that word is "trip". Could we not try to use a different expression? I do not know enough of the English language, and my teacher, Senator Rossiter, has left me and moved to another seat. However, Senator Cochrane, an equally good teacher of English, said that there are other words for "trip" that will excite people less, people who seem to be on a trip. To be very frank, I feel I am on a trip myself at this moment.

In the future, could we not change that word to "business"? We could say we are on business outside the Senate or on business inside of the Senate, and perhaps slowly, gradually, people will lose their stupid — and I do not mince my words — way of describing the work of the Senate. These are bona fide works of the Senate that are considered by some as junkets and trips.

For instance, I do not know what we will do with Bill C-20. Who knows? We may decide to travel. Perhaps we will go on a trip across Canada to study Bill C-20. I do not know. I am not giving my speech today, but if we were to do it, we would certainly be on business outside of the Senate. This is just a proposal.

I do not object — I would not dare — to the report that has just been presented since I have seen the kind of firm hand Senator Rompkey uses to chair the Internal Economy Committee. I am not opposing, merely suggesting.

**Senator Rompkey:** Honourable senators, since those comments come from such an experienced and wise senator, I will take that suggestion under consideration, under active advisement, and I will consult with Senator Cochrane as to the appropriate wording.

**The Hon. the Speaker:** Is it your pleasure, honourable senators, to adopt the motion?

**Hon. Senators:** Agreed.

Motion agreed to and report adopted.

#### FIFTH REPORT OF COMMITTEE ADOPTED

The Senate proceeded to consideration of the fifth report of Standing Committee on Internal Economy, Budgets and Administration (Senate Estimates 2000-2001) presented in the Senate earlier this day.

**Hon. Bill Rompkey** moved the adoption of the report.

He said: Honourable senators, the Senate's proposed budget for 2000-2001 is \$52,495,000. Compared with 1999-2000

forecasted expenditures of \$50,500,000, this represents an increase of 3.9 per cent. Compared to the budget for fiscal year 1998-99, it is closer to a 1 per cent increase. If you express it in constant dollars, our expenditures for 1999-2000 come in at about the same level as in 1991-92.

Over the last five years, Supplementary Estimates were needed to cover both unforeseen expenses and underfunded budgets for committees and research. Statutory appropriations were also required to make up the shortfall on estimated travel costs, and the same is true for 1999-2000. The cost of travelling, because of the cost of fuel and so on, has risen 80 per cent over the past two years, so we have to provide for this.

• (1520)

Last year, when I rose in the chamber to table the budget for 1999-2000, I candidly said I had concerns that some areas, such as committees and research, were underfunded and that Supplementary Estimates might be required to cover potential shortfalls.

For this 2000-2001 budget, I am confident that, barring truly unusual circumstances, Supplementary Estimates will not be required. This budget proposes an expenditure increase of only 1.3 per cent more than was spent in 1998-99.

Like the people we serve, we have been stretching dollars further and further, trying to do the best we can with allocated resources. This budget, however, is significant in other ways. It represents a change in approach, making our budgetary process more rational and more transparent, while increasing accountability.

For a number of years now, the Senate has been a voluntary and willing participant in public expenditure restraint programs. We have practised expenditure restraint as we have taken on additional activities, most notably an unprecedented level of valuable and visible Senate committee activity.

The members of your Standing Committee on Internal Economy, Budgets and Administration now work on the fundamental realization that the Senate has specific operational requirements which must be appropriately funded. This may seem a self-evident principle, but it is one which has not always been reflected in the complex and often arcane world of government accounting. We believe that this year's Main Estimates proposal does just that — provides a minimum but necessary level of funding for the work that we do. We believe it is rational, open and accountable.

Honourable senators, value goes beyond costs and numbers. It reflects substance. The Senate contributes a great deal to the public process of this country. Many senators have developed areas of specialization in social, economic and cultural matters. Senators actively promote awareness of issues about which they and their fellow citizens care deeply. Senators do so through their individual work, through their work in this chamber, and, increasingly, through committee activity.



Despite the fact that we had a prorogation of the First Session of this Parliament, our committees have been very active. Senate committees have held 265 meetings, spent 473 hours hearing close to 800 witnesses and issued 80 reports this year alone. Committees have made 13 amendments to five government bills. There is no doubt in the minds of those who come into contact with us and in the minds of many expert observers that the Senate is a vital part of our parliamentary system. It promotes better government policies and investigates a wide range of social, economic and cultural issues.

Canadians who know the Senate also know it provides excellent value for money. This proposed budget will prove to be money well and wisely spent.

Honourable senators, I ask you to support the adoption of this report.

**The Hon. the Speaker:** Is it your pleasure, honourable senators, to adopt the motion?

**Hon. Senators:** Agreed.

Motion agreed to and report adopted.

## BUSINESS OF THE SENATE

### ADJOURNMENT

Leave having been given to revert to Government Notices of Motions:

**Hon. Dan Hays (Deputy Leader of the Government):** Honourable senators, with leave of the Senate and notwithstanding rule 58(1)(h), I move:

That when the Senate adjourns today, it do stand adjourned until Tuesday next, February 29, 2000, at 2 p.m.

**Hon. John Lynch-Staunton (Leader of the Opposition):** Honourable senators, I should like to ask the deputy leader what government business brings us back next week? What can we expect to see on the Order Paper when we come back on Tuesday?

**Senator Hays:** Honourable senators, as I said earlier, the government business that I am expecting to see on the Order Paper next week will be the first reading on Tuesday of Bill C-2, amendments to the Canada Elections Act. I am hopeful that we may also receive Bill C-10, the Municipal Grants Act.

As I said earlier, we had hoped to deal with Bill C-10 and Bill C-13 this week. We did not receive them. All honourable

senators are as aware as I am of events in the House of Commons. In answer to Senator Lynch-Staunton, that is my anticipation.

**Senator Lynch-Staunton:** I will not force the issue except to say that I find that a pretty thin agenda. We would be better off not coming back next week, nor the week after, except for committees. We can come back when we have concrete evidence that there is something substantial on the Order Paper. The last two weeks, except for private bills, have not been that productive. We should be a little more conscious of our responsibilities and the fact that the travelling and the displacements which lead to our meetings have not reflected money well spent.

I do not want to be picayune about this, but I am not aware of a Senate having so little government business before it and yet being called into session to deal with other matters which are not priority items. I urge the deputy leader to tell his colleagues on the other side who are responsible for sending business over here that if we have nothing from them, we will not sit. It is as simple as that. I think my views are shared on both sides.

**Senator Hays:** Honourable senators, I do not disagree with Senator Lynch-Staunton that, if we do not have a good reason to sit, we should consider not sitting. I undertake to explore those options in the course of my duties as house leader. In this case, however, Bill C-2 is important legislation.

In terms of the entreaties I have been making to the leadership in the other House that we receive these bills so we can proceed with the government's work, I have just been advised by the leadership in the other House that we may — and again I must use the word "may" — also receive other government bills.

Even so, the two bills mentioned previously are not our normal workload. We are all anxious to have government business which needs to be done so that we can attend to it in a timely way. I will continue to do everything I can to facilitate that and to facilitate, where appropriate, the Senate not sitting in the event that a sitting is not appropriate.

As my honourable friend mentioned, we are conscious that committees are working. Almost all senators are involved in committee work. Accordingly, short sittings are not always a waste of taxpayers' money because the majority of senators are also working on committee work.

Motion agreed to.

The Senate adjourned until Tuesday, February 29, 2000, at 2 p.m.

**THE SENATE OF CANADA**  
**PROGRESS OF LEGISLATION**  
**(2nd Session, 36th Parliament)**  
**Thursday, February 24, 2000**

**GOVERNMENT BILLS**  
**(SENATE)**

<b>No.</b>	<b>Title</b>	<b>1st</b>	<b>2nd</b>	<b>Committee</b>	<b>Report</b>	<b>Amend.</b>	<b>3rd</b>	<b>R.A.</b>	<b>Chap.</b>
S-3	An Act to implement an agreement, conventions and protocols between Canada and Kyrgyzstan, Lebanon, Algeria, Bulgaria, Portugal, Uzbekistan, Jordan, Japan and Luxembourg for the avoidance of double taxation and the prevention of fiscal evasion with respect to taxes on income	99/11/02	99/11/24	Banking, Trade and Commerce	99/12/07	none	99/12/16		
				Foreign Affairs	99/12/09	none			
S-10	An Act to amend the National Defence Act, the DNA Identification Act and the Criminal Code	99/11/04	99/11/18	Legal and Constitutional Affairs	99/12/16	two	00/02/09		

**GOVERNMENT BILLS**  
**(HOUSE OF COMMONS)**

<b>No.</b>	<b>Title</b>	<b>1st</b>	<b>2nd</b>	<b>Committee</b>	<b>Report</b>	<b>Amend.</b>	<b>3rd</b>	<b>R.A.</b>	<b>Chap.</b>
C-4	An Act to implement the Agreement among the Government of Canada, Governments of Member States of the European Space Agency, the Government of Japan, the Government of the Russian Federation, and the Government of the United States of America concerning Cooperation on the Civil International Space Station and to make related amendments to other Acts	99/11/23	99/12/01	Foreign Affairs	99/12/09	none	99/12/14	99/12/16	35/99
C-6	An Act to support and promote electronic commerce by protecting personal information that is collected, used or disclosed in certain circumstances, by providing for the use of electronic means to communicate or record information or transactions and by amending the Canada Evidence Act, the Statutory Instruments Act and the Statute Revision Act	99/11/02		Subject matter 99/11/24	99/12/06		99/12/09		
			99/12/06	Social Affairs, Science and Technology	99/12/07	2			
C-7	An Act to amend the Criminal Records Act and to amend another Act in consequence	99/11/02	99/11/17	Legal and Constitutional Affairs	99/11/30	4	99/12/08		
C-9	An Act to give effect to the Nisga'a Final Agreement	99/12/14	00/02/10	Aboriginal Peoples					
C-21	An Act for granting to Her Majesty certain sums of money for the public service of Canada for the financial year ending March 31, 2000	99/12/14	99/12/15	—	—	—	99/12/16	99/12/16	36/99



## COMMONS PUBLIC BILLS

No.	Title	1st	2nd	Committee	Report	Amend.	3rd	R.A.	Chap.
C-247	An Act to amend the Criminal Code and the Corrections and Conditional Release Act (cumulative sentences)	99/11/02							
C-202	An Act to amend the Criminal Code (flight)	00/02/08	00/02/22	Legal and Constitutional Affairs					

## SENATE PUBLIC BILLS

No.	Title	1st	2nd	Committee	Report	Amend.	3rd	R.A.	Chap.
S-2	An Act to facilitate the making of legitimate medical decisions regarding life-sustaining treatments and the controlling of pain (Sen. Carstairs)	99/10/13	00/02/23	Legal and Constitutional Affairs					
S-4	An Act to provide for judicial preauthorization of requests to be made to a foreign or international authority or organization for a search or seizure outside Canada (Sen. Nolin)	99/11/02							
S-5	An Act to amend the Parliament of Canada Act (Parliamentary Poet Laureate) (Sen. Grafstein)	99/11/02	00/02/22	Social Affairs, Science and Technology					
S-6	An Act to amend the Criminal Code respecting criminal harassment and other related matters (Sen. Oliver)	99/11/02	99/11/03	Legal and Constitutional Affairs					
S-7	An Act respecting the declaration of royal assent by the Governor General in the Queen's name to bills passed by the Houses of Parliament (Sen. Lynch-Staunton)	99/11/02	00/02/22	Privileges, Standing Rules and Orders					
S-8	An Act to amend the Immigration Act (Sen. Ghitter)	99/11/02							
S-9	An Act to amend the Criminal Code (abuse of process) (Sen. Cools)	99/11/03							
S-11	An Act to amend the Criminal Code to prohibit coercion in medical procedures that offend a person's religion or belief that human life is inviolable (Sen. Perrault, P.C.) (Dropped from Order Paper pursuant to Rule 27(3) 00/02/08) (Restored to Order Paper 00/02/23)	99/11/04							
S-12	An Act to amend the Divorce Act (child of marriage) (Sen. Cools)	99/11/18							
S-13	An Act to assist in the prevention of wrongdoing in the Public Service by establishing a framework for education on ethical practices in the workplace, for dealing with allegations of wrongdoing and for protecting whistleblowers (Sen. Kinsella)	99/12/02	00/02/22	National Finance					
S-15	An Act to amend the Statistics Act and the National Archives of Canada Act (census records) (Sen. Milne)	99/12/16							

S-16 An Act respecting Sir John A. Macdonald Day 00/02/22  
(Sen. Grimard)

PRIVATE BILLS

No.	Title	1st	2nd	Committee	Report	Amend.	3rd	R.A.	Chap.
S-14	An Act to amend the Act of incorporation of the Board of Elders of the Canadian District of the Moravian Church in America (Sen. Taylor)	99/12/02	99/12/07	—	—	—	99/12/08		





# CONTENTS

Thursday, February 24, 2000

	PAGE		PAGE
<b>Budget Speech</b>		Senator Boudreau .....	714
Accommodation for Senators in Commons Gallery.		Contribution to Efforts to End War in Kosovo.	
The Hon. the Speaker .....	708	Senator Lynch-Staunton .....	715
		Senator Boudreau .....	715
<b>SENATOR'S STATEMENT</b>		<b>Delayed Answers to Oral Questions</b>	
<b>National Capital Commission</b>		Senator Hays .....	715
Mandate. Senator LeBreton .....	708	<b>Health</b>	
		Appointments to Governing Council of the Population Health Initiative.	
		Question by Senator Cohen.	
		Senator Hays (Delayed Answer) .....	715
<b>ROUTINE PROCEEDINGS</b>		<b>Solicitor General</b>	
<b>Internal Economy, Budgets and Administration</b>		Program to Tighten Security with Regard to Terrorist Activities—	
Fourth Report of Committee Presented. Senator Rompkey .....	708	Request for Details.	
Senator Hays .....	709	Question by Senator Di Nino.	
Senator Kinsella .....	709	Senator Hays (Delayed Answer) .....	715
Fifth Report of Committee Presented. Senator Rompkey .....	709	<b>Agriculture and Agri-Food</b>	
<b>Business of the Senate</b>		Farm Crisis in Prairie Provinces—Flooding Problem	
Senator Hays .....	710	in Manitoba and Saskatchewan.	
Senator Lynch-Staunton .....	710	Question by Senator Stratton.	
<b>Energy, the Environment and Natural Resources</b>		Senator Hays (Delayed Answer) .....	716
Notice of Motion to Authorize Committee to Extend Date		<b>Business of the Senate</b>	
of Final Report on Study of Matters Related to Mandate.		The Hon. the Speaker .....	716
Senator Spivak .....	710	Senator Lynch-Staunton .....	716
		<b>National Defence</b>	
<b>QUESTION PERIOD</b>		Provisions of Naval Service Act. Senator Ruck .....	716
<b>Agriculture and Agri-Food</b>		Senator Hays .....	716
Farm Crisis in Saskatchewan and Manitoba—Adequacy		<b>ORDERS OF THE DAY</b>	
of Additional Aid Program. Senator Gustafson .....	711	<b>Sir John A. Macdonald Day Bill (Bill S-16)</b>	
Senator Boudreau .....	711	Second Reading—Debate Adjourned. Senator Grimard .....	717
Farm Crisis in Prairie Provinces—Request for Leniency		Senator Grafstein .....	717
in Farm Credit Corporation Loan Guidelines.		<b>Aboriginal Peoples</b>	
Senator Gustafson .....	712	Committee Authorized to Permit Electronic Coverage.	
Senator Boudreau .....	712	Senator Hays .....	718
Senator Andreychuk .....	712	<b>Internal Economy, Budgets and Administration</b>	
Farm Crisis in Saskatchewan and Manitoba—Flooding Problem		Fourth Report of Committee Adopted. Senator Rompkey .....	718
in Border Region—Coverage under Additional Aid Program.		Senator Prud'homme .....	719
Senator Stratton .....	712	Fifth Report of Committee Adopted. Senator Rompkey .....	719
Senator Boudreau .....	713	<b>Business of the Senate</b>	
Request for National Farm Policy. Senator Tkachuk .....	713	Adjournment. Senator Hays .....	720
Senator Boudreau .....	713	Senator Lynch-Staunton .....	720
<b>Finance</b>		<b>Progress of Legislation</b> .....	i
Budget—Possibility of Substantial Tax Cuts.			
Senator Meighen .....	713		
Senator Boudreau .....	713		
<b>National Defence</b>			
Participation in Anti-submarine Exercise in Ionian Sea.			
Senator Forrestall .....	714		











*If undelivered, return COVER ONLY to:*  
Public Works and Government Services Canada —  
Publishing  
45 Sacré-Coeur Boulevard,  
Hull, Québec, Canada K1A 0S9



CANADA

# Debates of the Senate

---

2nd SESSION

•

36th PARLIAMENT

•

VOLUME 138

•

NUMBER 33

---

OFFICIAL REPORT  
(HANSARD)

Tuesday, February 29, 2000

---

THE HONOURABLE GILDAS L. MOLGAT  
SPEAKER





## CONTENTS

(Daily index of proceedings appears at back of this issue.)

---

*Debates:* Chambers Building, Room 943, Tel. 996-0193

Published by the Senate

Available from Canada Communication Group — Publishing, Public Works and  
Government Services Canada, Ottawa K1A 0S9,

Also available on the Internet: <http://www.parl.gc.ca>

## THE SENATE

Tuesday, February 29, 2000

The Senate met at 2:00 p.m., the Speaker in the Chair.

Prayers.

### SENATORS' STATEMENTS

#### ONTARIO

##### POST-SECONDARY EDUCATION—GRANTS TO UNIVERSITIES WITH EMPHASIS ON LIBERAL ARTS COURSES

**Hon. Lois M. Wilson:** Honourable senators, Ontario intends to stream the coming swell of college and university students away from the humanities and social sciences and into computer, engineering, medical research, and communications courses. To achieve this, the Ontario government launched last week a \$1.4-billion building program, the largest investment in post-secondary education in a generation, lavishing funds on high-tech courses at major universities and colleges while starving the liberal arts and smaller schools that focus on them. Institutions in Toronto will receive more than half of the new funding. Universities that have heavy emphasis on liberal arts programs — Brock, Trent, Windsor, Nipissing — will receive not a penny.

There are still those who believe in the value of a liberal arts degree, even in the workforce, and I am such a one. A *Globe and Mail* editorial today suggests that those who want liberal arts education get to work and establish private liberal arts universities, even if some of us oppose that idea on principle and even if that community is not nearly as well placed to do so financially as the high-tech community.

In anticipation of this move, 16 chancellors of Ontario, of which I am one, inspired by Peter Gzowski, Chancellor of Trent University, issued the following statement today to the media:

Higher education is of the utmost importance to the future of Ontario. We need a university system that is characterized by excellence, accessibility, diversity and flexibility. The liberal arts and sciences must continue to be a seminal part of Ontario's higher education. A number of recent studies have underlined that a well rounded, general education — learning to think, to write and express one's ideas clearly — is as valuable to future employability as technical or technological training. To meet these goals, the universities need renewed funding. Both government and the private sector must join in an effort to see that the needs for a well-educated workforce and a new generation of leadership is met. Whatever new mechanisms for funding

are developed, they should permit universities themselves to manage enrollment demand and to maintain a diverse and forward-looking curriculum and program of research. The people of Ontario are proud of their universities and what they stand for. We should work together to see that pride maintained.

Honourable senators, I hope this trend in Ontario does not spread to other provinces.

[Translation]

### CANADA ELECTIONS BILL

#### FIRST READING

**The Hon. the Speaker** informed the Senate that a message had been received from the House of Commons with Bill C-2, respecting the election of members to the House of Commons, repealing other Acts relating to elections and making consequential amendments to other Acts.

Bill read first time.

**The Hon. the Speaker:** Honourable senators, when shall this bill be read the second time?

On motion of Senator Hays, bill placed on the Orders of the Day for second reading on Thursday, March 2, 2000.

[English]

● (1410)

### BLACK HISTORY MONTH 2000

**Hon. Donald H. Oliver:** Honourable senators, today is the last day of Black History Month. What a month it has been. Over the last four weeks, hundreds of events were held throughout Canada in celebration and recognition of the importance of black African history. I believe that for the most part, all events were quite successful.

I am often asked: What is so special about the history of black people that it needs a whole month-long celebration? My response is that for many years the history and achievements of black people have been ignored and even denied by the leading Western academics and historians. The cultural events, exhibits, lectures, films and political activities of Black History Month acknowledge the history and the contributions made by the black people of Canada in the development of this nation. In doing so, black Canadians are given a sense of place, of pride and of purpose in continuing the work of their ancestors.



This year, I had the honour to participate in 14 major Black History Month events in schools and communities in Nova Scotia, Quebec and Ontario. I will also speak soon in Vancouver and Saint John. This month's activities culminated last weekend with a dinner in Toronto on Saturday night, paying tribute to the 17 black judges from across the nation whose presence within the Canadian justice system and the important role they play serves as a powerful reminder that no matter how high the goal, it is always attainable. On Sunday I had a speaking engagement with the acclaimed Canadian author George Eliot Clarke at the Chelsea Club here in Ottawa. There, I spoke about how important it is that those of us of African descent realize our true heritage and our true roots, if we are to have a complete identity and if we are to find ourselves.

As a black senator, part of my responsibilities are focussed on helping to break down the barriers of systemic racism in order to make this country a better place for all Canadians. I believe that the Senate could have done a better job to mark Black History Month. The Leader of the Government in the Senate could, for instance, have used the month to initiate an "inquiry" to quantify and address the problems and concerns of blacks in this country. We know the problems are real. Consider, for a moment, the issue of unemployment. While national unemployment levels are currently 8 per cent, in black communities, particularly in Nova Scotia — and, this is well known to the Leader of the Government in the Senate — unemployment rates are nearly 35 per cent.

Canadians, black and white, tend to look at the horrors of racism in the United States with the attitude that such things could never occur in Canada. I will remind senators of the recent acquittal of four New York City police officers charged with murder for firing at an unarmed African immigrant 41 times. Nineteen bullets hit the young man as he stood innocently in the door of his apartment. People believe that such atrocities have never occurred in Canada but they have, and we in this country have our own travesties of justice to atone for. This is why recognition of African Heritage Month is so important to the continued growth, development and success of Canada. For, as the saying goes: How can you know where you are going if you do not know where you have been?

Today, as Black History Month 2000 officially comes to a close, I encourage honourable senators to join me in keeping the spirit of this month alive all year long. To appreciate the contributions and achievements of all people throughout the year will help to foster unity in this country to the benefit of all Canadians in the future.

#### PAGES EXCHANGE PROGRAM WITH HOUSE OF COMMONS

**The Hon. the Speaker:** Honourable senators, I should like to introduce the page from the House of Commons who is here with

us this week on the exchange program. It is Kaija Belfry, of Charlottetown, Prince Edward Island. Kaija is studying at the Faculty of Social Sciences, University of Ottawa, and her major is in political science.

On behalf of all honourable senators, I welcome you here to the Senate. We hope this week will help you pursue your studies in political science. We think it is a great place to learn.

## ROUTINE PROCEEDINGS

### BUDGET DOCUMENTS

TABLED

**Hon. Dan Hays (Deputy Leader of the Government):** Honourable senators, pursuant to rule 28(3), I have the honour to table, in both official languages, certain documents relating to the budget, which I will list in the order that I will table them. First, "The Budget Speech;" second, "The Budget In Brief;" third, the "Five-Year Tax Reduction Plan;" fourth, "Making Canada's Economy More Innovative;" fifth, "Improving the Quality of Life of Canadians and Their Children;" sixth, "The Budget Plan 2000;" seventh, "Overview;" eighth, "Tax Relief for Canadians;" ninth, "Our Children, Our Future;" tenth, "Notice of Ways and Means Motion to Amend the Income Tax Act;" eleventh, "Notice of Ways and Means Motion to Amend the Excise Tax Act;" twelfth, "Notice of Ways and Means Motion to Amend the Customs Act;" and thirteenth, "Notice of Ways and Means Motion to Amend the Special Import Measures Act."

### INTERNAL ECONOMY, BUDGETS AND ADMINISTRATION

SIXTH REPORT OF COMMITTEE PRESENTED  
AND PRINTED AS APPENDIX

**Hon. Bill Rompkey:** Honourable senators, I have the honour to present the sixth report of the Standing Committee on Internal Economy, Budgets and Administration, regarding budgets for Senate committees for the fiscal year 1999-2000.

*(For text of report, see today's Journals of the Senate, p. 377.)*

**The Hon. the Speaker:** Honourable senators, when shall this report be taken into consideration?

On motion of Senator Rompkey, report placed on the Orders of the Day for consideration at the next sitting of the Senate.

## STATE OF HEALTH CARE SYSTEM

REPORT OF SOCIAL AFFAIRS, SCIENCE AND TECHNOLOGY  
COMMITTEE REQUESTING AUTHORIZATION  
TO ENGAGE SERVICES PRESENTED

**Hon. Michael Kirby**, Chairman of the Standing Senate Committee on Social Affairs, Science and Technology, presented the following report:

Tuesday, February 29, 2000

The Standing Senate Committee on Social Affairs, Science and Technology has the honour to present its

### FIFTH REPORT

Your Committee, which was authorized by the Senate on December 16, 1999 to examine and report upon the state of the health care system in Canada, respectfully requests that it be empowered to engage the services of such counsel and technical, clerical and other personnel that may be necessary.

Pursuant to Section 2:07 of the *Procedural Guidelines for the Financial Operation of Senate Committees*, the budget submitted to the Standing Committee on Internal Economy, Budgets and Administration and the report thereon of that Committee are appended to this Report.

Respectfully submitted,

MICHAEL KIRBY  
*Chairman*

(For text of Appendix, see today's Journals of the Senate, Appendix, p. 384.)

**The Hon. the Speaker:** Honourable senators, when shall this report be taken into consideration?

On motion of Senator Kirby, report placed on the Orders of the Day for consideration at the next sitting of the Senate.

• (1420)

## THE SENATE

NOTICE OF MOTION TO AUTHORIZE CLERK  
TO PAY WITNESS TRAVEL EXPENSES

**Hon. Dan Hays (Deputy Leader of the Government):** Honourable senators, I give notice that on Wednesday next, March 1, 2000, I will move:

That the Clerk of the Senate be authorized to pay the travel expenses of Mr. Wesley Cragg and Ms Bronwyn Best of Transparency International Canada, who appeared before the Committee of the Whole on December 3, 1998, during its study of Bill S-21, respecting the corruption of foreign

public officials and the implementation of the Convention on Combating Bribery of Foreign Public Officials in International Business Transactions, and to make related amendments to other Acts.

## ABORIGINAL PEOPLES

NOTICE OF MOTION TO AUTHORIZE COMMITTEE  
TO ENGAGE SERVICES

**Hon. Jack Austin:** Honourable senators, I give notice that on Wednesday next, March 1, 2000, I will move,

That the Standing Senate Committee on Aboriginal Peoples have power to engage the services of such counsel and technical, clerical and other personnel as may be necessary for the purpose of its examination and consideration of such bills, subject matters of bills and estimates as are referred to it.

## THE BUDGET 2000

STATEMENT OF MINISTER OF FINANCE—NOTICE OF INQUIRY

**Hon. John Lynch-Staunton (Leader of the Opposition):** Honourable senators, I give notice that on Tuesday, March 21, 2000, I will call the attention of the Senate to the budget presented by the Minister of Finance in the House of Commons on February 28, 2000.

## CENSUS RECORDS

PRESENTATION OF PETITIONS

**Hon. Lorna Milne:** Honourable senators, I have the honour to present two petitions, totalling 244 signatures, from the Genealogical Association of Nova Scotia and the Lambton County Branch of the Ontario Genealogical Society. They are petitioning the following:

Your petitioners call upon Parliament to enact legislation to preserve the Post 1901 Census Records, remove them to the National Archives and make these, as well as future census records, available to the public after 92 years as is presently consistent with the many provisions of the privacy legislation and time limit now in force.

## QUESTION PERIOD

### HEALTH

FEDERAL TRANSFERS TO PROVINCES

**Hon. John Buchanan:** Honourable senators, I have a question for the Leader of the Government in the Senate. The last time an exchange of this sort occurred was when he would question me. Now we will do it the other way around.



**Senator Lynch-Staunton:** He probably got a better answer then.

**Senator Buchanan:** He always got clear answers.

**Senator Lynch-Staunton:** Was it a clear question?

**Senator Graham:** Maybe Senator Buchanan would like the answer before he asks the question.

**Senator Buchanan:** You never know. Perhaps the minister gave me the answer. We were such a cordial group in Nova Scotia that from time to time that used to happen.

Honourable senators, a few years ago, when he was minister of finance for Nova Scotia, Senator Boudreau travelled to Ottawa to discuss with the Minister of Finance for Canada the freeze on health monies coming from Ottawa to the provinces. Under the John Savage government at the time, the provincial government wanted the federal government to restore the monies that had been frozen and give them back to the provinces in the years 1995, 1996, 1997, et cetera. Does the minister recall that?

**Hon. J. Bernard Boudreau (Leader of the Government):** Honourable senators, I recall with a certain fondness the Question Periods to which my friend refers. It was much more enjoyable on the other end of the question than it is now when I am required to provide an answer.

Honourable senators, during the time I served as Minister of Finance in Nova Scotia, I recall the discussions we had with the federal Minister of Finance and others who were, over a period of years, reducing the amount of transfers being paid to the Province of Nova Scotia. Of course, I objected loudly at the time, as one might expect, especially in view of the particular circumstances in which we found ourselves as a provincial government. However, I did acknowledge the fact — publicly at the time, much to the consternation of some of my colleagues — that it was necessary for the good of the country that the federal government first get its deficit under control and its fiscal house in order. Without that happening, Nova Scotia and all the other provinces would suffer on an ongoing basis.

Honourable senators, the deficit is gone and the federal government now has its fiscal house in order. Given that we are into the first of a series of surplus budgets the likes of which have not been seen in this country in the last 50 years, there is an obligation to look at some of those reductions and do some restoration work. That is exactly what the Minister of Finance has done in this current budget. Finance Minister Martin will be putting \$2.5 billion back into the system over a period of years. I am informed that the combination of tax points and cash transfers in this upcoming fiscal year will amount to a greater number than was ever transferred to the provinces in the past. I think the Minister of Finance is to be commended for restoring that balance and reinstating those cash transfers when the Government of Canada is in a position to do so.

**Senator Buchanan:** I can understand the answer of the government leader. Certainly, his comments today were not the kind of comments he made when he was Minister of Finance for Nova Scotia.

**Senator Kinsella:** Politics.

**Senator Buchanan:** No, we do not play politics in Nova Scotia.

#### THE BUDGET—ALLOCATION FOR FEDERAL TRANSFERS TO PROVINCES

**Hon. John Buchanan:** Honourable senators, let me put it this way. The Leader of the Government has just said that the federal Minister of Finance is now restoring monies that have been frozen over the last five to seven years.

There is a problem in the Atlantic provinces, according to every minister of finance and premier, including Premier Brian Tobin, who I watched last night on television. Premier Tobin praised certain aspects of the budget but did not praise the monies allotted to health care and education. In fact, he was a bit harsh about that, and rightly so.

In Nova Scotia, for instance, the amount the province is spending on health care is now approximately \$500 million more than in 1996. That results mainly from the Canada Health and Social Transfer. Nova Scotia will receive \$75 million from this budget over the next four years. That money is not for health care only; it is earmarked for health care and education. The amount of money that will actually come out of the system from Ottawa to Nova Scotia and the other provinces in the Atlantic region is not even as much money as these provinces received last year.

Honourable senators, how can the Leader of the Government in the Senate say that this federal budget provides monies to the provinces for health care, monies that the federal government has taken away for the last five to seven years?

**Hon. J. Bernard Boudreau (Leader of the Government):** Honourable senators, increased expenditures in the health care field in the province of Nova Scotia — and I suspect elsewhere as well — have been substantial. As a matter of fact, there have been few years when there has not been double-digit growth in health care expenditures in Nova Scotia. I can only recall a couple of years when there was no growth. I do not think the growth in health care expenditures had much to do with with transfer payments.

• (1430)

As I heard the Minister of Finance say last night, the broad transfer payment mechanism of the CHST is not necessarily the only means of dealing with health care needs. In fact, the minister made it clear that the federal government would be at the upcoming meeting of health ministers to talk about very focused assistance in the health care field. I believe that is a better approach to take for a province such as Nova Scotia.



The honourable senator and I have been very committed in the government of Nova Scotia, so perhaps we can beg the indulgence of others who are not quite as connected to that province. Under the present formula, not much of the broad-based CHST transfers from the federal government will end up in Nova Scotia. That is as a result of the formula to which the premiers and the federal government agreed. I hope that the Government of Nova Scotia and other provincial governments will sit down with the federal government and focus specifically on certain areas that need to be addressed in the health care field.

**Senator Buchanan:** Honourable senators, I have no difficulty with the provincial ministers of health sitting down with Minister Rock. In the 13 years during which I was premier, that probably happened every year. Some years we would get additional monies and others we would not. When the Leader of the Government was minister of finance in Nova Scotia, the same kind of thing would have occurred, as it would have with Don Downe over the last few years.

When Minister of Health Jamie Muir does sit down with the other ministers of health and the federal Minister of Health, my concern is whether there will be more than \$2.5 billion, which, we must remember, is spread over four years and includes education.

What is the good of Nova Scotia sitting down with the federal Minister of Health if only \$75 million is available over the next four years? That is not even enough to cover the shortfall from last year. Is there new money? If not, what will they talk about?

**Senator Boudreau:** Honourable senators, there are other programs outlined in this budget that will deliver money for both health and education to Nova Scotia and the other provinces. Under the Chairs of Excellence Program, hundreds of millions of dollars will be put into education in all provinces, including Nova Scotia. Nova Scotia stands to benefit to a large extent because we have a large number of universities for the size of the province. That is an area of possibility.

In health as well, funds have been laid out in the budget for the Canadian Institutes of Health Research which will funnel money into health efforts in provincial jurisdictions.

With respect to the other areas to which the honourable senator refers, I can only repeat two things which I heard the Minister of Finance say yesterday, both of which were very encouraging to me. First, the Minister of Finance indicated that what was outlined in a multi-year plan reflected the minimum involvement that of the Government of Canada. I am confident that as we move forward we will be able to improve on that minimum in virtually every area. Second, there are certain areas of health and education which are fundamentally provincial jurisdictions where we must be more careful. However, I was encouraged

when the Minister of Finance said that the federal government would consult with provincial ministers of health to see where the needs are and whether we can develop a broad-based agreement. He said that he would be there with the money, and that is encouraging to me.

**Senator Buchanan:** Honourable senators, that is very encouraging, but if the government is only juggling the money announced last night, it will not help.

I acknowledge the other programs the Leader of the Government mentioned, but the most important program is our hospitals. The deficits faced by every hospital in the Atlantic provinces must be eliminated. Most of those deficits occurred as a result of the freeze on CHST by the Government of Canada. I am encouraged to hear that when Minister Rock sits down with his counterparts in the provinces they will discuss not only the monies announced last night, but additional monies.

## TRANSPORT

### THE BUDGET—ALLOCATION FOR INFRASTRUCTURE— FUNDS FOR HIGHWAY 101 IN NOVA SCOTIA

**Hon. John Buchanan:** Honourable senators, I have a further question for the Leader of the Government in the Senate, and it is with regard to Highway 101. As I recall, when the Leader of the Government was minister of finance for Nova Scotia — as well as under the tenure of Don Downe and various other ministers of transport — the federal government committed to providing money to help in the construction of Highway 101 from Mount Uniacke to Cole Brook, and perhaps even further.

Last night's budget provided \$30 million for infrastructure for Nova Scotia, which includes sewer, water and highways. That is not even a drop in the bucket of funds needed to upgrade Highway 101. Over 50 people have died on that road since 1993. I know that the Leader of the Government understands that situation because, right up until last year, he and his counterparts urged the federal government to provide funding to help build four-lanes on Highway 101. That is not enough money.

Is the federal government now willing to abide by its agreement to provide funding on a 50-50 basis for Highway 101?

**Hon. J. Bernard Boudreau (Leader of the Government):** Honourable senators, there is a substantial commitment in the budget to the infrastructure just mentioned. As well, there is other infrastructure funding for areas relating to environmental initiatives, which might involve certain municipal sewer and water systems and other waste disposal systems. A multi-year \$1-billion infrastructure program for federal properties was outlined in the budget.

I have not had an opportunity to review with the Minister of Transport what funds will be available to him and what his discussions will be with the provinces. I hope to do that in the next few days. I am hopeful that as much money as possible will be directed to highway infrastructure initiatives, and that some of that money will go to Nova Scotia.

## FISHERIES AND OCEANS

### THE BUDGET—ALLOCATIONS FOR NOVA SCOTIA AND FOR RESEARCH ON EAST COAST

**Hon. Donald H. Oliver:** Honourable senators, my question is directed to the Leader of the Government and relates to the issue of fisheries in the budget. As the Leader of the Government knows, fisheries is a major resource which is still extremely important to the people of Atlantic Canada. As I understand it, the Department of Fisheries and Oceans will receive an extra \$320 million over three years to beef up search and rescue operations, make badly needed wharf repairs and fix serious health problems in some of its labs.

• (1440)

My first question to the minister is: How much of that money will go to the Atlantic area, and specifically to Nova Scotia? My second question is: Where is the money in this budget for needed research for the preservation of our dwindling fish stocks?

**Hon. J. Bernard Boudreau (Leader of the Government):** Honourable senators, to answer the honourable senator's first question, I do not have the details on the program. I am aware that \$320 million over three years was outlined in the budget. As to how it breaks down provincially, I am not aware that that information has been released yet, although I am sure it is available. I will see what I can do about getting the specific details for the honourable senator.

Part of the initiative will be to ensure that the federal government is involved in efforts to sustain our resources and to provide the appropriate safety and security on Canada's coasts. Of course, some of the major challenges we face at the moment happen to be on the East Coast.

**Senator Oliver:** Honourable senators, my question was not directed toward safety and security but more toward dollars for research. The research is required because, as the minister knows, we no longer have a cod fishery in Atlantic Canada. Our scallop fishery is under pressure. The groundfishery is under pressure. Where are the dollars for research to help us find a way to preserve those fast dwindling fish resources?

**Senator Boudreau:** Honourable senators, I will undertake to obtain for the honourable senator the best geographic breakdown I can. As well, I will obtain information as to how the resources will be divided over the three years into various programs. In particular, I will inquire as to the efforts to preserve the resource on both coasts of our country. I will provide that information to the senator at the earliest possible date.

### THE BUDGET—ALLOCATION FOR EAST COAST— INPUT OF LEADER OF GOVERNMENT

**Hon. Donald H. Oliver:** Honourable senators, can the minister tell us whether he was consulted by the Minister of Finance in drafting the provisions in the budget in relation to the

fisheries? Did this minister stand up for the fisheries on the East Coast to ensure that they receive their adequate and fair share of funding in the budget?

**Hon. J. Bernard Boudreau (Leader of the Government):** Honourable senators, I can say an absolute "yes" on both counts. I was consulted and I did represent the interests of the Atlantic fishery as best I was able. The response of \$320 million in new programs is a very significant one as concerns the fishery on the East Coast.

## NATIONAL DEFENCE

### THE BUDGET—DISTRIBUTION OF ALLOCATION

**Hon. J. Michael Forrestall:** Honourable senators, yesterday, the government threw a bit of a lifeline to Canada's Armed Forces in the amount of some \$1.7 billion over the next three years. They need an additional \$1 billion or so merely to cover operations and maintenance, as well as for the training shortfall. The Canadian Armed Forces need an additional \$1 billion per year for capital programs over the next five to six years. However, they will receive \$1.7 billion over three years when they need, at a minimum, \$2 billion, and probably closer to \$3 billion per year, simply to bring them up to where they were five or six years ago.

On what exactly is the government intending to spend this windfall? It is of vital concern to the structure of the National Defence forces right across the country. Where is the government planning to implement further cuts so as to maintain the operational viability of Canada's Armed Forces?

**Hon. J. Bernard Boudreau (Leader of the Government):** Honourable senators, the figures which I drew from the budget for National Defence totalled \$2.329 billion over four years, which might explain the slight difference. The indication is that the expenditures will be in three general areas. The first is to support our peacekeeping operations as they exist and as they continue to exist over that period. The second is to assist with the quality-of-life issues for those people serving in our Armed Forces. The third is to aid with the upgrading of equipment.

As to the precise nature of how this will break down, I am sure the Minister of National Defence will be outlining that in more detail in the days and weeks ahead. Today, the day after the budget was delivered, that is the best general breakdown that I can give to the honourable senator.

**Senator Forrestall:** Honourable senators, I know the minister would not want to leave any confusion in the minds of Canadians. Money is needed for the social and hygienic problems facing the lower ranks, in particular those who did not receive the cozy pay raises that those in the higher ranks received. While that money may have been necessary, these bonuses and rewards were paid out on the backs of privates and corporals. Thank God it was not my position to have to do that. I would be somewhat embarrassed.



Just so there is no confusion, is that \$300-million sum to overcome some of these deficiencies, such as keeping our troops away from the soup kitchens and out of the lineups at food banks, part of the \$1.7 billion, or is it in addition to the \$1.7 billion?

**Senator Boudreau:** Honourable senators, I am not certain if I have a breakdown for the honourable senator. The figure I had was \$2.329 billion over four years, along with a general outline as to what the divisions would be for that expenditure.

I agree with the honourable senator when he says that this additional funding does not solve all the problems. In my view, it will not be the last effort of this government with respect to the Armed Forces. It represents a serious turning point for them, along with some other major capital acquisitions which have occurred recently. I believe that it is something on which we can build.

As the Minister of Finance indicated in his speech, we are dealing with multi-year plans. However, the Minister of Finance indicated that for budgeting purposes he will operate on a two-year rolling target. As he suggested, he hopes to be able to add additional support to those various areas that have been outlined in his budget.

The amount will be welcome news among our Armed Forces personnel. They recognize that more is needed. However, it is a substantial measure.

#### THE BUDGET—ALLOCATION FOR REPLACEMENT OF SEA KING HELICOPTERS

**Hon. J. Michael Forrestall:** Honourable senators, it is a great deal of money. When I first came to Ottawa, the total government budget, statutory and otherwise, was something in the order of \$6 billion. In my view, \$1.7 billion is a great deal of money. There was no mention whatsoever of any funding for the Sea King replacement program in the budget. When questioned, the Minister of Finance said that there would not be a replacement in this fiscal year. Someone has to be behind the eight ball on this question of replacing the Sea Kings. I asked the other day why we did not participate in certain manoeuvres and training programs. I think the answer is quite clear.

Has the Leader in the Government had any specific communications from the Minister of National Defence or the office which calls for proposals for the replacement of the Sea King helicopter that would lead him to believe that that program could come this spring? Will we have to hang in there for one more budget?

**Hon. J. Bernard Boudreau (Leader of the Government):** Honourable senators, I do not know that I have seen any details

to date on the capital equipment spending outlined as part of the major new commitment of funding. As the honourable senator has pointed out, even if there were a decision tomorrow morning to proceed as quickly as possible with the acquisition of replacement helicopters for the Sea King, they would not be here within the upcoming fiscal year.

• (1450)

**Senator Forrestall:** The minister is misinterpreting. The helicopters were promised within five years, but that was last year. Is it now six years down the road? Dating back to the time of the undertaking, is it seven or eight years down the road? When will it be, if ever?

**Senator Boudreau:** Honourable senators, I can only indicate at this stage that a substantial amount of new money in the budget has been allotted to defence. I can also repeat that the Honourable Minister of National Defence has said that this is his top priority. He was interviewed this morning and sounded very bullish about his priorities. I hope that we will be able to share some specific news in the not-too-distant future.

**The Hon. the Speaker *pro tempore*:** Honourable senators, there are only two minutes left for Question Period, and I have six senators on my list who have indicated that they wish to ask questions. I will accept two more questions.

#### TRANSPORT

##### THE BUDGET—ALLOCATION FOR INFRASTRUCTURE— FUNDS FOR HIGHWAYS IN NEW BRUNSWICK

**Hon. Noël A. Kinsella (Deputy Leader of the Opposition):** Honourable senators, New Brunswickers, like Nova Scotians and other Canadians, watched the budget speech with interest. With reference to the matter of the infrastructure funding contained in the speech, when that \$1 billion over six years is applied to the matter of highways and highway construction, does the minister agree that we are really talking about \$150 million in that area? If so, when that money is spread between the provinces, how much might the people of New Brunswick expect to receive and how many kilometres of highway will that money build?

**Hon. J. Bernard Boudreau (Leader of the Government):** Honourable senators, an amount of money is specifically earmarked for highway infrastructure. However, other infrastructure amounts are contained in that program. Once the program reaches full capacity, it will offer approximately \$550 million a year in federal funding.

I have not had an opportunity to discuss this matter in detail with the Minister of Transport and to inquire as to whether any of that additional infrastructure money would be available for highway construction, if indeed that was the priority indicated by the province. That issue has not been cleared up entirely. However, I am hopeful that we will be able to add to the infrastructure amount, whether it is \$150 million or part of the \$550 million. That has yet to be clarified.



**Senator Kinsella:** The honourable senator is a regional minister as well as minister for the government in this place. The people of New Brunswick have looked at the \$150 million designated for highway construction. If we calculate the division of that amount on the basis of population, the New Brunswick Minister of Finance has estimated that we are talking about building one new kilometre of road. As the regional minister, does my honourable friend think he can influence his colleagues that the province of New Brunswick needs more than one kilometre of new highway?

## HEALTH

### THE BUDGET—ALLOCATION FOR FEDERAL TRANSFERS TO PROVINCES

**Hon. Noël A. Kinsella (Deputy Leader of the Opposition):** My supplementary question concerns the monies made available for health. Again, our calculations in New Brunswick indicate that this budget represents three days of medicare in New Brunswick. Could the minister tell New Brunswickers which three days in the 2000-01 fiscal year will be chosen to pay for medicare in New Brunswick? Will February 29 be chosen, which does not occur this year?

**Hon. J. Bernard Boudreau (Leader of the Government):** Actually, February 29 does occur this year!

**Senator Kinsella:** Yes, but it does not occur this fiscal year.

**Senator Boudreau:** As I responded in an earlier question, this year the cash payment and the tax points will have been restored up to and beyond their highest level in the past few years. This involves a major contribution by the federal government to the provincial governments to assist them in meeting the health care needs of their citizens. The provincial governments have a serious responsibility to do likewise. They will all contribute substantially to the provision of these health care services.

The federal government's contribution has continued to grow. The cash transfer portion of the CHST has continued to grow over the last number of budgets; it may continue to grow over the next few budgets. In fact, I hope that it does. In any event, the levels are at an all-time high.

Honourable senators, I think the provincial governments have been given a legitimate signal by the federal Minister of Finance, supported by the federal Minister of Health, that he is prepared to

sit down and talk about programs and meeting specific needs. I would encourage the provinces to respond to the signal.

## BUDGET 2000

### LONG-TERM BENEFITS TO TAXPAYERS

**Hon. David Tkachuk:** Honourable senators, I will not ask the Leader of the Government a question about yesterday's Martin budget. Minister Martin is going in the right direction, but it is very difficult figuring out when he will get there. However, I do wish to ask about specifics, which seem to be greatly lacking in the budget — that is, the three-year plan, the four-year plan and the five-year plan — when compared to last year's budget.

If a single, college graduate makes \$40,000 to \$45,000 a year, what will his tax savings be both this year and next year?

**Hon. J. Bernard Boudreau (Leader of the Government):** Honourable senators, I have some models with me. If I do not have the specific model on which the honourable senator would like some information, I will undertake to get one from the Department of Finance. Honourable senators, the closest example I have in front of me is of a typical family of four with one wage earner, where he or she is earning \$40,000. In the first year, their federal income tax will be reduced by 17 per cent. By the end of taxation year 2004, that family of four will see their income tax reduced by 48 per cent. Given a number of assumptions, at the end of fiscal year 2004, that will represent a savings of federal income tax of \$1,623.

That example does not match exactly the situation the honourable senator raised, but if there are specific examples to which the honourable senator wishes me to respond, I am certain that I can get that information from the Department of Finance.

**The Hon. the Speaker *pro tempore*:** Honourable senators, as we are now 10 minutes over the time allotted for Question Period. I cannot allow any more questions.

## DELAYED ANSWERS TO ORAL QUESTIONS

**Hon. Dan Hays (Deputy Leader of the Government):** Honourable senators, I have a response to a question raised in the Senate on February 15, 2000, by the Honourable Senator Di Nino and the Honourable Senator Kinsella regarding China, the detention of a Catholic archbishop, and a request for clarification of human rights policy between large and small countries; a response to a question raised in the Senate on February 22, 2000, by the Honourable Senator Roche regarding the United States and a proposal to develop a ballistic missile defence system; a response to a question raised in the Senate on February 23, 2000, by the Honourable Senator Murray regarding the Clarity Bill, divisibility of provinces; and a response to a question raised in the Senate on February 24, 2000, by the Honourable Senator Forrestall regarding participation in anti-submarine exercises in the Ionian Sea.

## FOREIGN AFFAIRS

### CHINA—DETENTION OF CATHOLIC ARCHBISHOP— REQUEST FOR CLARIFICATION OF HUMAN RIGHTS POLICY AS BETWEEN LARGE AND SMALL COUNTRIES

*(Response to questions raised by Hon. Consiglio Di Nino and Hon. Noël A. Kinsella on February 15, 2000)*

Canada's international human rights policy is based on the principle of universality. Canada is concerned with human rights in all countries around the world, including its own. The steps Canada takes will necessarily vary from country to country, depending on a range of complex factors: the severity of human rights abuses; the number and strength of indigenous human rights NGOs; and the capacity of the country to build a judicial, legal and human rights infrastructure. Each situation and each country hold a different potential for effective action. The key is to find the right foreign policy approach to fulfil the potential.

Canada remains very concerned about the human rights situation in China, including the treatment of Christians. Canada consistently registers its concerns through all avenues open to it, such as meetings with senior Chinese leaders and regular dialogue with Chinese officials, and through raising with the Chinese government cases of Chinese individuals imprisoned for political or religious reasons. Canada frequently calls on the Chinese government to end the suppression of freedom of religion, expression and spiritual practice, and to respect the International Covenant on Civil and Political Rights and the International Covenant on Economic, Social and Cultural Rights, which China has signed.

A central goal of Canada's policy towards China is to promote a greater respect for human rights by supporting and initiating positive change in Chinese attitudes and actions on human rights questions. Canada has used its bilateral human rights dialogue with China to express its concern on a range of issues, including freedom of religion, and to underline the contradiction between China's signing the two UN Covenants and its lack of adherence to international standards as related to freedom of religion, expression and association.

On a recent visit to China as head of a Canadian Religious Freedoms Delegation, Senator Lois Wilson raised Canadian concerns about human rights separately with the Chinese Vice-Minister of Foreign Affairs Yang Jiechi and the Director General of Religious Affairs Bureau. Moreover, the delegation explored with their church partners and officials ongoing challenges faced by Chinese churches. Subsequent to Senator Wilson's meeting, Canada's Ambassador met separately with Vice-Minister Yang to underline the Canadian government's concerns. Canada also

registers Canadian concerns with Chinese Embassy officials in Canada.

By engaging in dialogue Canada is able to familiarize Chinese officials with international standards and approaches to human rights. Canada's international development assistance programs also promote the enhancement of civil society in China. There are several projects underway which focus on encouraging China to reform its legal and judicial systems by increasing the transparency of legal processes and assisting China, in very practical terms, in ambitious efforts to further entrench the concept of rule of law. Projects include: the training of senior judges; the development of a national legal aid system; a civil society program to strengthen the functioning of autonomous peoples-based community voluntary organizations with a view to engendering the values of citizenship; and an international human rights implementation project to assist China's efforts in implementing international covenants through joint policy research, dialogue information dissemination and strategy development.

As for the case of Archbishop Yang Shudao, the Canadian Embassy in Beijing has raised this issue with the Chinese Foreign Ministry, expressing concern about reports that he had been detained for religious reasons. These concerns were expressed in the context of Canada's ongoing exchanges with the Chinese authorities as described above.

## FOREIGN AFFAIRS

### UNITED STATES—PROPOSAL TO DEVELOP BALLISTIC MISSILE DEFENCE SYSTEM—REQUEST FOR INFORMATION

*(Response to question raised by Hon. Douglas Roche on February 22, 2000)*

The United States is in the process of developing a National Missile Defence (NMD) capability for defence against possible threats from so-called rogue states (e.g. North Korea, Iran, Iraq), which are developing long-range ballistic missiles. The NMD system would provide for defence against an attack by a limited number of missiles and warheads. The system is not designed for, or capable of, countering Russia's nuclear deterrent forces.

The U.S. administration has stated its intention to ensure that a deployed National Missile Defence system would be compliant with an amended Anti-Ballistic Missile Treaty to be negotiated with Russia. The U.S. is pursuing discussions with Russia on this matter. The United States has not yet taken a decision to deploy such a system nor has Canada been asked to participate in NMD. Consequently, Canada has not taken a position on this issue.



Canada considers the Anti-Ballistic Missile Treaty to be a cornerstone of global strategic stability and an important element of the international arms control and disarmament regime. Canada would need to assess the implications for international arms control, particularly the ABM Treaty, together with other relevant factors before determining the position Canada would eventually take should the U.S. decide to deploy an NMD system.

## INTERGOVERNMENTAL AFFAIRS

### CLARITY BILL—DIVISIBILITY OF PROVINCES

*(Response to question raised by Hon. Lowell Murray on February 23, 2000)*

Bill C-20 does not deal with the creation of new provinces but rather the secession of a province from Canada. The legislation adheres closely to a decision of the Supreme Court of Canada in the *Quebec Secession Reference* which concluded that all issues including borders would be on the table in negotiations on secession. As long as a province remains part of Canada, its borders cannot be changed without its consent by virtue of section 43 of the *Constitution Act, 1982*. Thus, Nova Scotia is not "divisible" if it remains in Canada unless the Nova Scotia government agrees to its division.

Furthermore, section 42(1)(f) provides that the establishment of new provinces would require the consent of at least seven provinces representing at least fifty percent of the population. Finally, under section 3 of the *Constitution Act of 1971* and subsection 43(a) of the *Constitution Act of 1982*, no modification may be effected to the borders of a province without the consent of that province.

## NATIONAL DEFENCE

### PARTICIPATION IN ANTI-SUBMARINE EXERCISE IN IONIAN SEA

*(Response to question raised by Hon. J. Michael Forrestall on February 24, 2000)*

Canada is a full and active member of NATO. As outlined in our defence policy, Canada maintains a commitment to participate occasionally with NATO's Standing Naval Force Mediterranean. While there is currently no ship assigned to the Standing Naval Force Mediterranean, a CF Aurora is participating in the exercise.

• (1500)

## ORDERS OF THE DAY

### FINANCING OF POST-SECONDARY EDUCATION

#### INQUIRY—DEBATE CONTINUED

On the Order:

Resuming debate on the inquiry of the Honourable Senator Atkins, calling the attention of the Senate to the financing of post-secondary education in Canada and particularly that portion of the financing that is borne by students, with a view to developing policies that will address and alleviate the debt load which post-secondary students are being burdened with in Canada.—(Honourable Senator DeWare).

**Hon. Mabel M. DeWare:** Honourable senators, I rise today with enthusiasm to speak in support of the inquiry initiated by the Honourable Senator Norman Atkins into the financing of post-secondary education in Canada.

First, I wish to commend Senator Atkins for recognizing the urgency of addressing this crucial area, for proposing constructive solutions and for prompting much needed debate in this chamber. After slashing transfers to the provinces for post-secondary education, the current government has taken some baby steps to make it up in small part to Canadian students. Yesterday's budget continued that trend. However, giant strides are needed to help post-secondary students, graduates, their families and the Canadian economy in a meaningful way.

Honourable senators, I have a personal interest in post-secondary education issues. I was a member of the Special Senate Committee on Post-Secondary Education, which reported in December 1997. I also served as Minister of Advanced Education and Training in New Brunswick. Not least, as the grandmother of several university students and recent graduates, I understand the difficulties facing young people who want to further their education.

I remember well the post-war years to which Senator Atkins referred in his speech of February 22, 2000. As Canada prepared for an era of peace and stability, our national government wisely recognized that it must play a big role in ensuring a well-educated workforce, a workforce that could help Canada achieve prosperity and a high standard of living for its citizens.

Under the Veterans Rehabilitation Act, my husband, Ralph, qualified for benefits to attend dental school. As long as he stayed in the top 25 per cent of his class, his university tuition was paid. Like other married students, he also received a living allowance of \$100 a month, plus \$11 for each child, and we had two at the time. Those were lean years. We lived in a small university apartment on the Halifax waterfront, with no telephone because we could not afford one. It was a struggle to keep us all in food and clothes. Sometimes we had to rely on the generosity of our families. However, we managed, and we were grateful that Ralph was given the opportunity to train for a new career because, otherwise, we could have never afforded to send him to university to become a dentist. He succeeded, thanks to the far-sighted government of the day and because of his own hard work, and he enjoyed a long and productive career.

My heart goes out to young people starting out today. Post-secondary studies are simply not an option for many of them because of the tremendous cost and lack of government support. As a result, they could end up struggling through a lifetime of lean years as they try to support their families on low wages from unsatisfactory jobs. Those who do get a degree or diploma often graduate with crushing debts that can prevent them from buying a house or car, getting married or raising a family.

Through his taxes, my husband repaid the government's original investment many times over. I believe that he, like others who benefitted from the veterans program, repaid that investment in other ways, by contributing to the strength of their communities across Canada and to the health of our national economy.

Unfortunately, the current government has taken a much narrower view of post-secondary education. It is so narrow, in fact, that its policies have helped to drive our colleges and universities to the brink of financial crisis. It is the students who are being left to pick up the tab. The Millennium Scholarship Foundation was meant to be a grand political gesture, but it does nothing to address the underfunding of universities and provides very little help to individual students. Despite growing public awareness and repeated calls for action, the Prime Minister and his cabinet do not seem to truly recognize the importance of post-secondary education to Canada's economy and to the quality of life that we enjoy.

That importance has already been well documented in various studies. The Special Senate Committee on Post-secondary Education conducted one such study. Rather than reinvent the wheel, I should like to share with you some of the observations that it made in its report. In particular, I believe that it summarizes very nicely the various ways in which post-secondary education is good for a country and its people.

I wish to quote from "A Senate Report on Post-Secondary Education in Canada", which states, in part, at page 6:

— the economic benefits of post-secondary education accrue both to the individuals whose human capital it enhances and to the society at large. The former gain by higher incomes from more stimulating and challenging

occupations, less frequent unemployment and, when it is encountered, unemployment of shorter duration. Our society gains by a more informed, productive and adaptable labour force, a larger tax base, reduced welfare expenses and, perhaps more importantly, from the myriad ways in which an educated citizenry enhances and elevates the social system within which it lives.

The study by the Special Senate Committee on Post-Secondary Education concludes that post-secondary education is "of critical national importance."

I would venture to say that post-secondary education has never been as critical to Canada's future as it is right now. We have become part of an increasingly knowledge-based global economy from which there is no turning back. There is growing demand for high technology skills, the development of which requires extensive education and training and an emphasis on lifelong learning. Companies looking to invest in Canada must be able to count on a workforce that has the education and skills that they need. If Canada cannot offer them enough skilled workers, those companies will simply go elsewhere. The jobs, tax revenues and economic spinoffs will leave with them. At the same time, we are facing greatly increased demand for post-secondary education as the children of the baby boomers mature. An article in *Maclean's* of November 15, 1999, predicted that university enrolment will grow by 20 per cent, and perhaps more, in the next 10 years.

In addition, we should not overlook the fact that Canada's post-secondary institutions are an important source of jobs and economic growth in and of themselves. For example, together, the four universities in my province of New Brunswick produce 8,200 jobs and contribute \$476 million per year to the provincial economy. As centres of knowledge and skills, colleges and universities can also attract new industries to a region. In New Brunswick, these schools have recently been a magnet for the communications and information technology industries.

As Senator Atkins has already pointed out, education, including post-secondary education, falls largely within provincial jurisdiction. Primary responsibility for providing post-secondary education rests with provincial governments. However, post-secondary education is in the national interest. Therefore, the federal government has traditionally contributed a substantial portion of the funds needed to support it through transfer payments to the provinces. Clearly, a strong federal commitment of resources is necessary. However, that commitment has been watered down drastically since the current government took office in 1993.

• (1510)

The results of the sharp reduction in transfers to the provinces for post-secondary education has been dramatic. Reduced funding has had a dangerous impact on the quality of education, on accessibility to post-secondary studies and on university-based research and development. These matters were brought home to us during our study on post-secondary education in 1997.



Let us look for a moment at how the quality of post-secondary education has been affected. Canada's post-secondary institutions have been struggling to do more and more with less and less. In many cases, budget cuts have meant that new books and periodicals cannot be purchased for libraries, so students often do not have access to the most up-to-date information available in their fields. Universities are often unable to replace outdated laboratory and other equipment, even though these are important teaching tools. Needed repairs to buildings and classrooms are postponed because money is so tight. This impacts on accessibility to universities as well.

A January 2000 report by the Association of Atlantic Universities and Atlantic Provinces Economic Council entitled "Our University Students: The Key to Atlantic Canada's Future", noted:

The lack of appropriate facilities, including classrooms and laboratories, has led to enrolment caps or other program constraints in a number of key areas, in particular some of the scientific fields which require more sophisticated research facilities.

In addition, colleges and universities are having trouble attracting the best qualified teaching staff as professors retire in increasing numbers. The same *Maclean's* edition I referred to earlier warned that between now and 2010, more than 20,000 of Canada's 33,000 faculty members will have to retire or leave for other reasons. That is a shocking number, honourable senators.

In turn, colleges and universities have been forced to raise their tuition fees beyond the reach of many prospective students. This is primarily where we see the effect of funding cuts on the accessibility to post-secondary education. In fact, tuition has more than doubled in the past decade. As Senator Atkins pointed out, it now averages more than \$4,000 a year, and it will continue to climb unless we start to see some positive action from the federal government. Other mandatory fees, such as student activity fees, have also increased significantly.

Although Canada's federal government appears largely unaware of this situation, this unfortunate reality has caught the attention of the international community. The United Nations Committee on Economic, Social and Cultural Rights observed in December 1998:

The Committee views...with concern the fact that tuition fees for university education in Canada have dramatically increased in the past few years, making it very difficult for those in need to attend university in the absence of a loan or grant. A further subject of concern is the significant increase in the average student debt on graduation.

Honourable senators, the current government's apparent lack of concern about the crisis facing Canada's post-secondary

institutions may stem from the fact that the post-secondary participation rate has risen in recent years at the same time as tuition fees have gone through the roof. Obviously, it is not seeing what is an obvious cause-and-effect situation. However, that is because the population of potential college and university students, generally those in the 18 to 24 age group, has increased thanks to the so-called "echo boom."

The rising participation rate does not capture the number of high school graduates, particularly those from low-income families, who decide not to pursue advanced education because of the cost. It does not really reflect the number of college and university students who drop out of their programs because they cannot afford to keep going, or because they do not want to rack up any more debt. It does not take into account those who give up because they are tired of living in poverty and going to campus food banks because the structure of the Canada Student Loan program prevents them from earning enough income to buy groceries.

The participation rate certainly does not capture the crippling debt load which many students carry when they leave college or university: \$25,000, on average, and rising. Students cannot always find a job in Canada that pays well enough to give them any hope of ever paying off their student loans. Graduates may take their degree and head south of the border in an attempt to get their finances in order, adding to the brain drain that is harming our economy.

An October 1997 report entitled "Accessibility to Post-secondary Education in the Maritimes," prepared by the Angus Reid group for the Maritime Provinces Higher Education Commission, noted that:

A growing number of students leave their post-secondary programs in a very deep financial hole, one which will take a long time to dig out of.

That report projected as well that the average debt load of post-secondary students in Atlantic Canada will reach almost \$40,000 by 2005.

Federal funding cuts have also had a negative impact on research and development performed by Canadian colleges and universities. The federal government supports university-based research through the Canada Health and Social Transfer and through its granting councils. As a result of cuts to the CHST, some research facilities and equipment have deteriorated or become obsolete, specialized support staff have been laid off, and professors have had to spend more time on teaching and class work instead of research. Meanwhile, cuts to the granting councils' budgets have meant that less research can be supported to begin with.

Reduced funding makes it difficult for Canadian colleges to retain the established research teams and to attract the best graduate and post-graduate students. This can have extremely serious long-term consequences for Canada since post-secondary institutions are responsible for about one quarter of the value of all investment in Canadian research.

I am sure we all appreciate the budget announcement of \$900 million over five years to the federal granting councils to establish and sustain Canada research chairs. Indeed, this new measure will help our post-secondary institutions attract and retain the best researchers. The additional funding for the Canada Innovation Foundation is most welcome.

However, I do not believe that these measures will fully compensate for the deterioration in R & D capacity that our colleges and universities have experienced in recent years.

In addition, the extra \$2.5 billion over four years that the budget promised for health care and post-secondary education appears to be too little too late. The one-time infusion of additional support does not allow the provinces to do the long-range planning that is needed to ensure a viable future for these critical areas. As well, the needs of post-secondary students and institutions may get lost in the shuffle if the provinces decide to spend those funds to help the health care crisis.

**The Hon. the Speaker *pro tempore*:** Senator DeWare, I regret to inform you that your speaking time has expired. Are you requesting leave to continue?

**Senator DeWare:** Yes, Your Honour.

**The Hon. the Speaker *pro tempore*:** Honourable senators, is leave granted?

**Hon. Senators:** Agreed.

**Senator DeWare:** Thank you, honourable senators.

It is against this rather depressing backdrop that I should like to comment on some of Senator Atkins' observations and suggestions. First, I wish to state my whole-hearted agreement with everything that he said and with his proposals for addressing the financing of post-secondary education and student assistance.

In particular, I second his recommendation that the Canada Health and Social Transfer be fully restored to its 1993 level. Funding levels must be increased for this and future years.

I add my voice to Senator Atkins' in asking the government to amend the Income Tax Act to eliminate the taxable status of scholarships. Yesterday's federal budget announced some progress by increasing to \$3,000 from \$500 the amount of tax-free income from bursaries, fellowships and scholarships. Coincidentally, the new ceiling is equal to the amount of Canada Millennium Foundation scholarships. That increase will certainly help those students who might actually see any of the money, if it is not siphoned off by the provinces before it ever gets to the students. The taxable status of scholarships, fellowships and bursaries needs to be completely eliminated, and I question the government's judgment in choosing not to do so yesterday.

Most of all, I was inspired by Senator Atkins' call for creative thinking and bold measures in the area of student financial assistance. I, too, believe Canada must establish a large-scale

program of assistance for Canadian students in need. Canada must do that with the same vision and purpose that led to the development of the veterans' program following the Second World War. My family and thousands of others benefitted from the government's investment in that program, for the greater good of our economy and our nation.

• (1520)

The federal government must surely recognize the critical national importance of post-secondary education. Accordingly, the government must invest sufficient resources to achieve a higher level of education among Canadian workers. After all, one cannot get something for nothing, and money spent on improving our colleges and universities, and providing financial incentives to pursue higher education, is indeed an investment.

The return, in both economic and social terms, is nothing short of tremendous. Clearly, the government must focus on the goal of helping Canada build an educated workforce in order to compete and prosper in a knowledge-based global economy, and all Canadians will benefit from a higher standard of living.

Unfortunately, yesterday's budget did not announce any investments that would make it easier for Canadian young people to pursue post-secondary studies. Other than removing the burden of taxation from some scholarships, fellowships and bursaries, the budget did not address student assistance.

While a student assistance plan that makes sense is being developed, I suggest that the government look at how it can make the present Canada Student Loans Program work better for students; but the government seems to care only about making it work better for the banks. For example, the extra \$100 million that the government is giving the banks to administer student loans could have provided a large amount of debt or interest relief. Instead, that is going into the banks' bottom line, at a time when they are already reporting billions of dollars in profits.

Honourable senators, I look forward to hearing comments and ideas about the financing of post-secondary education from other senators in this chamber, and I expect there will be many. Thanks to the lack of vision and creative thinking that has been shown thus far by the current government in this area, the field remains wide open. I urge honourable senators to participate in this important debate by speaking to Senator Atkins' inquiry.

On motion of Senator Hays, debate adjourned.

## FUTURE OF CANADIAN DEFENCE POLICY

INQUIRY—DEBATE ADJOURNED

**Hon. J. Michael Forrestall** rose pursuant to notice of February 22, 2000:

That he will call the attention of the Senate to the future of Canadian Defence Policy.



He said: Honourable senators, with the end of the Cold War, Canada finds itself entangled in an uncertain, unstable and rapidly changing international system. The United States remains the world's only superpower, but it may be challenged in that role by China. Despite the collapse of the old Soviet Union, Russia maintains a powerful strategic nuclear arsenal that may represent a threat to Western interests in the future. Rogue nations, such as Iraq and North Korea, continue to threaten regional and global harmony and security.

Additionally, an ever-increasing world population faces new pressures, as food and resources, especially fresh water, decline. Coupled with ethnic and religious pressures, populations are becoming divided, and in some cases this has led to the disintegration of states, rapidly emerging humanitarian crises, and even wars. The international community also faces growing concerns over the proliferation of weapons of mass destruction, international terrorism, illegal immigration and drug trafficking.

In summary, all too often in today's world, people and states find themselves the victims of violence perpetrated by those who do not respect human rights and the rule of international law. It is for that reason that countries write defence policies and maintain military forces. Now, I suggest, is not the time for complacency but a time for action — action to bring back stability and order.

Honourable senators, Canada is part of the world community. We are a G-8 country. Our standard of living, one of the highest in the world, is a function of our trade with the rest of the world and our continued involvement in the global marketplace. Over the past 100 years, from the Boer War to East Timor, through two devastating world wars, Canadians have earned the reputation of being willing to uphold the principles of justice and order in the international system. However, we have regional and domestic concerns that demand our attention.

Sharing a vast continent with the one remaining superpower presents Canada with a unique situation. In many respects, the security of Canada is of more concern to the Americans, ironically, than it is to Canadians. Yet, sharing this continent does not entitle Canada to a free security ride. Unless we are prepared to abrogate our sovereignty, we must ensure the security of Canadian territory at sea, on land and in the air, in such a way that our neighbours do not become concerned. The Munroe Doctrine could apply as easily to the northern part of the hemisphere as to the southern. In this, as we all know, NORAD is more than a military arrangement — it is the guarantor of Canadian sovereignty.

Canada is also a member of NATO. It maintains close contact with its allies in Europe and gains considerable prestige from its participation in that alliance. Canada was one of the founding members of the United Nations and has participated widely in peacekeeping operations since its inception, on the belief that a peaceful world makes for a safer and more prosperous Canada. With international membership, however, comes responsibility to maintain international peace and stability. If we do not bear our fair share of the collective burden, then we will lose our seat at the table where decisions are made, as we did with regard to the Contact Group in Bosnia.

Canada is a player on the world stage and, as such, faces several potential challenges to its sovereignty, its citizens and their economic interests abroad. In this, government has a responsibility to ensure that Canadians and Canadian interests throughout the world are not put in jeopardy. To meet these broad challenges of the next millennium, Canada must maintain properly equipped and operationally effective military forces to safeguard Canadian sovereignty and to protect Canadian interests around the world. Isolation is not a possibility when Canada is intermingled in the global economy.

Canada's national security objectives must reflect Canadian security requirements. Canada's national security objectives are as follows: to preserve Canadian national security and thus sovereignty; to deter aggression through participation in collective security organizations such as NATO and NORAD; and to promote international security and stability through the auspices of the United Nations peacekeeping operations on a priority basis.

• (1530)

By attaining its national security objectives, Canada will prosper and enter the next millennium as a world leader in the promotion of international security, democratic development, environmental protection and international trade, rather than as a bit player on the world stage.

The Canadian Forces is the main element in achieving Canada's national security objectives and ensuring national survival in an uncertain and rapidly changing world. To attain our national security objective and protect Canadian interests and lives, the Canadian Forces must be properly structured, trained, equipped and led. To this end, Canada's military must be prepared for a wide variety of activities from all across the spectrum of conflict, ranging from low- to high-intensity operations.

Honourable senators, the Canadian Forces must be fully interoperable with the military forces of our allies and friends. To be operationally effective, military forces must be capable of surviving and sustaining operations in a multi-threat environment around the globe. When deploying our forces, we cannot wait for others to come to our rescue or depend on others to provide for our forces should we falter. A military commitment to global security demands an appropriate level of operational support if it is not to be a mere token commitment.

There is strong reason today to doubt that Canada can field and sustain an effective contribution to world security. Recent deployments have essentially been tokens and have not always met the expectations of our partners. Strong reason also exists to question our ability to ensure our territorial integrity and to preserve our sovereignty. These are not idle remarks. They reflect the fact that we have allowed the capability of our forces to decline to the point where longer-term effectiveness has been put in jeopardy. Simply, we can no longer carry our share of the international security burden and now must defer to others to do the lion's share. For a country so deeply integrated into the global economy and so dependent on global trade for its high standard of living, this surely is wrong.

Without delving too deeply into the mire of detail, some immediate concerns stand out. First, without question the most pressing need is for the forces to be structured to meet the demands and challenges of the present uncertain and unstable world by having an effective rapid crisis response capability — “rapid” in being able to deploy in days rather than weeks. Almost certainly, this will require changes in force structure and command concepts, changes in the number of personnel dedicated to operations with appropriate training allocations, and that new equipment be purchased. Above all, there is need for new and more dynamic leadership, leadership not hampered by bureaucratic concerns that have the absolute confidence not only of its political leaders but also, and most important, that of the men and women under its command. These forces must be fully interoperable, not just within themselves as joint forces but also with the forces of our partners.

Second, the present force command structure must be changed and oriented toward operational concerns. The new command structure should separate the military and civilian functions to establish a streamlined, effective National Defence Headquarters organization. The new command structure must emphasize operational effectiveness, efficient resource management, clearly defined roles, and accountability. The ombudsman’s position must be entrenched through legislation to maintain its independence and to clearly define its authority. Additionally, an inspector general and supporting staff should be established to maintain the operational effectiveness and to ensure the operational readiness of the Canadian Forces prior to any overseas deployment.

Third, while the Canadian Navy and Air Force are at the moment prepared to operate in this challenging milieu, it has been obvious for some time that the Canadian Army is seriously under-equipped and poorly organized for the revolution in military affairs. This situation cannot continue to affect our security and the safety of our dedicated soldiers and multilateral partners in military operations abroad.

More important, by only providing token forces we are damaging our international reputation as a good citizen. We must stop thinking in “penny packages” of troops and return to the concept of committing useful and self-sufficient combat formations. It may well be that after a sound plan for mobilization is developed and tested, our militia may be able to take on an ever more advanced augmentation role, but mobilization must remain the reserve army’s first priority.

Finally, several major re-equipment programs must be implemented to enable Canadian Forces to effectively protect Canadian national interests. For instance, the Canadian Army must acquire a rapidly deployable direct fire support vehicle. An immediate and suitable replacement must be found for the old and unreliable Sea King maritime patrol helicopter. The Canadian Navy and Air Force require strategic sea and airlift assets to support joint operations if the Army is to have any credible role in future multilateral military operations. The CP-140 maritime patrol aircraft, the Aurora, must receive an update so that Canada can maintain its only strategic airborne surveillance platform.

Honourable senators, Canada’s defence budget must reflect its national security objectives, strategy, and force structure requirements within the confines of the current environment of fiscal restraint. That can only be achieved by maintaining defence spending at responsible levels and must be based on long-term capital acquisition plans. The operations and maintenance budget should be separated from the capital expenditure budget. The Department of National Defence requires immediate additional annual funding to maintain current capabilities and implement proposed long-term capital programs. Defence spending should, at a minimum, remain constant over a five-year period.

In terms of capital programs, a greater partnership between the Department of National Defence and Canadian industry must be implemented free from political considerations to ensure maximum operational effect for our defence dollars. Canadian defence requirements have been a constant catalyst for research and development in Canadian industry, and this is more important today in the information age than at any time in our history.

To this end, DND should ensure that Canadian industry is aware of its operational requirements, and industry must ensure that the military is aware of its ability to supply cost-efficient, operationally effective equipment and services. Additionally, re-equipping the Canadian Forces must also remain affordable, and, for that reason, capital acquisitions must continue to focus on the purchase of affordable, combat-effective, off-the-shelf weapons systems.

To this end, Canada requires a new defence management approach that will extract the maximum value from every dollar while enhancing the operational effectiveness of the forces.

Honourable senators, the Canadian Forces have suffered from indifferent neglect for too long, and this irresponsible situation should not be allowed to continue. Like the Canadian people they defend, the Canadian Forces deserve responsible, interested and committed government management and support. This will ensure that Canada will enter the new millennium with an affordable, operationally effective, combat-ready, modern military prepared to meet any national security challenge. Honourable senators will understand why today I am very disappointed.

On motion of Senator Hays, debate adjourned.

• (1540)

## ENERGY, THE ENVIRONMENT AND NATURAL RESOURCES

COMMITTEE AUTHORIZED TO EXTEND DATE OF FINAL REPORT  
ON STUDY OF MATTERS RELATED TO MANDATE

**Hon. Mira Spivak**, pursuant to notice of February 24, 2000,  
moved:



That, notwithstanding the Order of the Senate adopted on December 1, 1999, the Standing Senate Committee on Energy, the Environment and Natural Resources, in accordance with rule 86(1)(p), which was authorized to examine such issues as may arise from time to time relating to energy, the environment and natural resources generally in Canada, be empowered to submit its final report no later than June 30, 2001.

Motion agreed to.

## ABORIGINAL GOVERNANCE

### REPORT OF COMMITTEE ON STUDY—DEBATE CONTINUED

Leave having been given to revert to Reports of Committees:

On the Order:

Resuming debate on the consideration of the third report of the Standing Senate Committee on Aboriginal Peoples entitled: "Forging New Relationships: Aboriginal Governance in Canada", tabled in the Senate on February 15, 2000.—(*Honourable Senator Johnson*).

**Hon. Janis Johnson:** Honourable senators, it gives me great pleasure to follow Senator Charlie Watt, former chairman of the Standing Senate Committee on Aboriginal Peoples, and join the debate on the report on aboriginal governance. This report entitled "Forging New Relationships: Aboriginal Governance in Canada" represents the fruit of the labour of this committee spread over two years. As honourable senators know, I served as deputy chair of the committee. It was a unique experience which I shall always consider special in my work as a senator.

The committee had its genesis in the report of the Royal Commission on Aboriginal Peoples which stressed self-governance for Canada's aboriginal people; and in establishing this self-governance, new positive relationships were to develop between the aboriginal peoples and the non-aboriginal community in Canada.

While our report does not deal in detail with new self-governing structures, it is important for the administrative recommendations it makes. It is also important for the methodology used to arrive at its recommendations.

As is the usual course with parliamentary committees, we developed a witness list and heard from various experts and aboriginal groups on the subject of self-government. However, we also established a consultative group, which we called our "round table in governance." This was the first time a Senate committee invited non-senators to participate directly in deliberations of key issues of relevance to the committee. This round table was composed of elders, traditional leaders and clan mothers. We benefited greatly from their advice.

In my opinion, there is no public policy issue more complex than the evolving relationship between aboriginal and

non-aboriginal peoples in Canada. The royal commission study set the stage for the movement to a third order of aboriginal government and recommended various forms that such government could take. However, we discovered in our hearings that while the goals of the royal commission were correct, the mechanics to put them into place are severely lacking at the present time.

Therefore, on the road to studying various structures for self-governing aboriginal nations, our committee took a significant detour. We placed most of our emphasis, at least in Part One of our report, on recommending structures that would ensure that aboriginal governances were addressed — grievances accumulated along the road to self-government. Let me explain.

Our witnesses, many from groups which operated under a form of self-government, spent most of their time in front of the committee listing issues and problems that flow out of the present system for establishing and monitoring self-government. Our report, therefore, represents our thoughts and recommendations as to both how the present system for those operating under a form of self-government can be improved and, second, how the road to future self-government agreements can be made easier.

Our committee believed that it was a positive use of our efforts to address the bureaucratic roadblocks we were told have been put in the way of those who wish to become self-governing aboriginal communities and those who already exercise such power. I would be remiss if I did not single out the evidence given and the documents tabled by the Cree-Naskapi Nation, as they were the first to point us in the direction of bureaucratic and administrative problems that bedevilled the concept of aboriginal self-government. With their evidence as a base, we were able to question other witnesses on this vitally important problem and discuss it as well with the elders at our round table on governance.

The recognition of the problem led directly to the recommendations contained in Part One of our report. We specifically recommended more flexible and inclusive federal approaches to engaging aboriginal peoples in self-government negotiations. As well, we recommended the establishment of a new office for aboriginal relations, separate from the Department of Indian Affairs and Northern Development, that would assume responsibilities for negotiating and implementing relationships with all aboriginal peoples. We also recommended the introduction of new legislation to provide a broad, statutory framework to guide the Government of Canada in its negotiation and implementation of treaties and other agreements. As well, we recommended the establishment of an independent oversight body reporting to Parliament with three primary roles pertaining to the relationship of aboriginal governments with the Government of Canada. They include a public reporting and education role; an investigative role, encompassing ombudsman and compliance-monitoring functions; and a facilitation role. In addition, we recommended cross-cultural training and education to enhance awareness of aboriginal rights, laws, respective cultures, traditions and social issues.

These recommendations should be regarded as inextricably linked. The federal government and, indeed, the provinces who are involved in negotiating self-government must be flexible. Self-government is anything but a situation where one size fits all.

Honourable senators, the Aboriginal Peoples Committee is considering the Nisga'a Final Agreement. As the evidence unfolds, it is obvious that the agreement certainly is not a template for future agreements, at least in the eyes of aboriginal witnesses. If there is no flexibility or no recognition that individual aboriginal groups differ in needs, concerns and what they wish to undertake, then there will be no success in negotiating solutions and agreements.

If agreements are not forthcoming through negotiations, then the only recourse for aboriginal groups is to the courts. This cannot be regarded as a satisfactory method of resolving outstanding issues. Therefore, flexibility is a must.

We were also told of a certain reluctance at DIAND among bureaucrats to actually negotiate self-government. Unfortunately, they regard self-government as a policy to be applied from time to time, but with no urgency or consistency. Many aboriginal groups told me of a reluctance on behalf of DIAND to become actively engaged in the resolution of outstanding self-governing issues. They perceived a virtual conflict of interest because as more and more groups achieved self-governing status, there will be less and less reason for DIAND to exist. To achieve the speedy resolution of self-governing issues and problems, we recommend that perhaps as part of the Privy Council Office, or on its own, a new office for aboriginal relations be established. This would take self-government right out of DIAND.

The question for us then became: What do we do about the lack of direction, policy implementation and the need for redress of grievances explained to us by our witnesses?

• (1550)

We believed these matters could be resolved by providing a statutory framework to guide the government in the negotiation and implementation of new relationships either through treaties or agreements. This legislation would set out principles that would govern self-governing negotiations and the commitment of the government to see a fair and just resolution to aboriginal problems. It could also contain framework agreements that would govern all participants to the self-governing process. It would be a guide against which all parties could measure progress.

In order to specifically address the many matters of conflict brought to us by witnesses, we determined that a new commission with ombudsman-like powers should be developed, and it would report directly to Parliament. We called this group the Treaty and Aboriginal Rights Implementation Review Commission. Hopefully, it would be the place, rather than the courts, where administrative issues between the aboriginal

groups and the federal government would be referred and resolved. We also hoped this commission would perform an educational function as well as facilitate the achievement of harmonious relationships, bringing together all groups involved in the self-government project. Its establishment would address a gaping hole in our relationship with aboriginal peoples.

At present, when deficiencies are found in treaty implementations or with the administration of self-government agreements, the only recourse is to look to DIAND for help. If help is not forthcoming, then court action must be contemplated. With the advent of this commission, many of these issues will be dealt with quickly, efficiently and certainly in a less expensive fashion than proceeding to the courts.

Honourable senators, in making these recommendations, we are very conscious of the costs that would be attached to them. We determined that, for the most part, these recommendations would be financed with the monies saved through the downsizing of DIAND that will flow inevitably as more and more aboriginal groups achieve self-government. Above all, these recommendations should not require the expenditure of new monies by the Government of Canada in order to have them implemented.

In addition to these recommendations and one other dealing with the sensitization of the judiciary, senior officials and lawyers to the many social and legal issues facing aboriginal peoples, the committee in Part Two of its report addressed a number of matters raised by witnesses. In Part Two, it was our intent to give an overview of the many problems addressed by witnesses and flag them as matters for future study. Included in these groups are models or structures of self-government; how self-government is to be financed; the need to provide educational courses for those aboriginal people who will be responsible for negotiating and implementing self-government; the position of aboriginal women, both legally and culturally, as we move to implement self-government; and the many complex issues facing aboriginal youth and those aboriginals living in cities, aboriginals without a land base.

Particularly, I should like to deal with the issues facing aboriginal women and the urban aboriginal living without a land base. The evidence given before our committee by aboriginal women's groups was to the effect that they were excluded from negotiations on self-government. They lack information on the process and believe their opportunities to participate are quite limited. Aboriginal women must be protected in the case of marriage breakdown, and, as in most cases they have custody of children, they must be assured of adequate housing. Our Charter of Rights and Freedoms guarantees aboriginal rights equally to both men and women. However, the reality is that we fall short of this goal in practice.

Honourable senators, I believe it is the intent of the Standing Senate Committee on Aboriginal Peoples to return to the topic for study when its current legislative load, Bill C-9, the Nisga'a Final Agreement, has been discharged.



I will conclude today by dealing with the issues that confront aboriginal youth living off reserve in urban settings. According to a recent study by the National Association of Friendship Centres and the Law Commission of Canada entitled "Urban Aboriginal Governance in Canada: Re-fashioning the Dialogue," aboriginal youth comprise more than 50 per cent of the aboriginal population living in urban areas. This group is the main repository of hope for the renewal of aboriginal societies and cultures, many of which are in danger of being lost.

Unfortunately, aboriginal youth in urban areas face poverty levels which are truly horrific. All of these related issues of substance, sexual and physical abuse, as well as family breakdown, threaten the survival of aboriginal culture in urban Canada. If we do not provide some form of governance with which this group can identify, they will continue to move into gangs as their alternative to aboriginal governance.

Professor Alan Cairns of the Faculty of Law at UBC has said recently that our concentration as parliamentarians and public policy-makers on aboriginal self-government for those with a land base results in the urban aboriginal being neglected. Unless we change our emphasis so that we are focusing on both the urban and land-based aboriginal, we will be sending the urban aboriginal down, as Professor Cairns terms it, "the road to cultural loss."

We as parliamentarians must recognize the problems of the urban aboriginal and begin to develop ways they can be included in governance structures. The Indian Council of First Nations of Manitoba, when appearing before our committee, stated the need for some form of community government in the urban areas. They also stressed that we look at DIAND's inability to deliver programs in an urban setting.

We also heard from the Ontario Federation of Indian Friendship Centres and the Aboriginal Peoples Council, both stressing the needs and concerns of aboriginals living in urban settings. They both advanced the idea of a "community of interest governance model" for urban settings.

Honourable senators, while I have no answers to these problems, I believe that we must begin to explore solutions with those who are on the front lines of service delivery and who know the problems of the urban aboriginal best, and that is the aboriginal people themselves. We must consult, we must listen, and we must act together with aboriginal Canadians. If we do not and if we continue to ignore the problem, a whole generation of aboriginal youth will be lost.

Honourable senators, the report of the Aboriginal People's Committee on governance is a start. It is a starting point, I believe, in the right direction. It provides a transition from the royal commission report to the reality of today. However, much more needs to be done in the area of our Aboriginal Peoples Committee. I suggest that when the committee finishes its deliberations on Bill C-9, to implement the Nisga'a agreement, the committee may wish to consider studying in depth the issues facing aboriginal women and aboriginal youth living in urban Canada. These are such critical areas.

I will conclude by thanking my honourable colleagues who worked so hard and for such very long hours on this committee. They are to be commended for the wisdom, patience and intelligence they showed on this matter of great importance to our nation.

On motion of Senator Pearson, debate adjourned.

### ADJOURNMENT

Leave having been given to revert to Government Notices of Motions:

**Hon. Dan Hays (Deputy Leader of the Government)**, with leave of the Senate and notwithstanding rule 58(1)(h), moved:

That when the Senate adjourns today, it do stand adjourned until tomorrow, Wednesday, March 1, 2000, at 1:30 p.m.;

That at 3:30 p.m. tomorrow, if the business of the Senate has not been completed, the Speaker shall interrupt the proceedings to adjourn the Senate;

That should a division be deferred until 5:30 p.m. tomorrow, the Speaker shall interrupt the proceedings at 3:30 p.m. to suspend the sitting until 5:30 p.m. for the taking of the deferred division; and

That all matters on the Orders of the Day and on the Notice Paper, which have not been reached, shall retain their position.

Motion agreed to.

The Senate adjourned until Wednesday, March 1, 2000, at 1:30 p.m.

# CONTENTS

Tuesday, February 29, 2000

PAGE

PAGE

## SENATORS' STATEMENTS

### Ontario

Post-Secondary Education—Grants to Universities with  
Emphasis on Liberal Arts Courses. Senator Wilson ..... 721

### Canada Elections Bill (Bill C-2)

First Reading. .... 721

### Black History Month 2000

Senator Oliver ..... 721

### Pages Exchange Program with House of Commons

The Hon. the Speaker ..... 722

## ROUTINE PROCEEDINGS

### Budget Documents

Tabled. Senator Hays ..... 722

### Internal Economy, Budgets and Administration

Sixth Report of Committee Presented and Printed as Appendix.  
Senator Rompkey ..... 722

### State of Health Care System

Report of Social Affairs, Science and Technology Committee  
Requesting Authorization to Engage Services Presented.  
Senator Kirby ..... 723

### The Senate

Notice of Motion to Authorize Clerk to Pay  
Witness Travel Expenses. Senator Hays ..... 723

### Aboriginal Peoples

Notice of Motion to Authorize Committee to Engage Services.  
Senator Austin ..... 723

### The Budget 2000

Statement of Minister of Finance—Notice of Inquiry.  
Senator Lynch-Staunton ..... 723

### Census Records

Presentation of Petitions. Senator Milne ..... 723

## QUESTION PERIOD

### Health

Federal Transfers to Provinces. Senator Buchanan ..... 723  
Senator Boudreau ..... 724  
The Budget—Allocation for Federal Transfers to Provinces.  
Senator Buchanan ..... 724  
Senator Boudreau ..... 724

### Transport

The Budget—Allocation for Infrastructure—Funds for  
Highway 101 in Nova Scotia. Senator Buchanan ..... 725

Senator Boudreau ..... 725

### Fisheries and Oceans

The Budget—Allocations for Nova Scotia and for Research  
on East Coast. Senator Oliver ..... 726  
Senator Boudreau ..... 726  
The Budget—Allocation for East Coast—Input of  
Leader of Government. Senator Oliver ..... 726  
Senator Boudreau ..... 726

### National Defence

The Budget—Distribution of Allocation. Senator Forrestall ..... 726  
Senator Boudreau ..... 726  
The Budget—Allocation for Replacement of Sea King Helicopters.  
Senator Forrestall ..... 727  
Senator Boudreau ..... 727

### Transport

The Budget—Allocation for Infrastructure—Funds for  
Highways in New Brunswick. Senator Kinsella ..... 727  
Senator Boudreau ..... 727

### Health

The Budget—Allocation for Federal Transfers to Provinces.  
Senator Kinsella ..... 728  
Senator Boudreau ..... 728

### Budget 2000

Long-Term Benefits to Taxpayers. Senator Tkachuk ..... 728  
Senator Boudreau ..... 728

### Delayed Answers to Oral Questions

### Foreign Affairs

China—Detention of Catholic Archbishop—Request for  
Clarification of Human Rights Policy As Between  
Large and Small Countries.  
Questions by Senators Di Nino and Kinsella.  
Senator Hays (Delayed Answer) ..... 728

### Foreign Affairs

United States—Proposal to Develop Ballistic Missile  
Defence System—Request for Information.  
Question by Senator Roche.  
Senator Hays (Delayed Answer) ..... 728

### Intergovernmental Affairs

Clarity Bill—Divisibility of Provinces.  
Question by Senator Murray.  
Senator Hays (Delayed Answer) ..... 729

### National Defence

Participation in Anti-Submarine Exercise in Ionian Sea.  
Question by Senator Forrestall.  
Senator Hays (Delayed Answer) ..... 729



	PAGE		PAGE
<b>ORDERS OF THE DAY</b>		<b>Energy, the Environment and Natural Resources</b>	
		Committee Authorized to Extend Date of Final Report on Study of Matters Related to Mandate. Senator Spivak .....	735
<b>Financing of Post-Secondary Education</b>		<b>Aboriginal Governance</b>	
Inquiry—Debate Continued. Senator DeWare .....	730	Report of Committee on Study—Debate Continued. Senator Johnson .....	736
<b>Future of Canadian Defence Policy</b>		<b>Adjournment</b>	
Inquiry—Debate Adjourned. Senator Forrestall .....	733	Senator Hays .....	738







*If undelivered, return COVER ONLY to:*  
Public Works and Government Services Canada —  
Publishing  
45 Sacré-Coeur Boulevard,  
Hull, Québec, Canada K1A 0S9



CANADA

# Debates of the Senate

2nd SESSION

•

36th PARLIAMENT

•

VOLUME 138

•

NUMBER 34

OFFICIAL REPORT  
(HANSARD)

Wednesday, March 1, 2000

—  
THE HONOURABLE GILDAS L. MOLGAT  
SPEAKER



This issue contains the latest listing of Senators, Officers of the Senate, the Ministry, and Senators serving on Standing, Special and Joint Committees.



## CONTENTS

(Daily index of proceedings appears at back of this issue.)

*Debates*: Chambers Building, Room 943, Tel. 996-0193

---

Published by the Senate

Available from Canada Communication Group — Publishing, Public Works and  
Government Services Canada, Ottawa K1A 0S9,

Also available on the Internet: <http://www.parl.gc.ca>

## THE SENATE

Wednesday, March 1, 2000

The Senate met at 1:30 p.m., the Speaker in the Chair.

Prayers.

### ROUTINE PROCEEDINGS

#### THE ESTIMATES, 2000-01

TABLED

**Hon. Dan Hays (Deputy Leader of the Government):** Honourable senators, I have the honour to table in both official languages a document entitled "2000-2001 Estimates," Parts 1 and 2, the Government Expenditure Plan and the Main Estimates.

NOTICE OF MOTION TO REFER PARLIAMENT VOTE 10  
TO JOINT COMMITTEE ON LIBRARY OF PARLIAMENT  
AND PRIVY COUNCIL VOTE 25 TO  
JOINT COMMITTEE ON OFFICIAL LANGUAGES

**Hon. Dan Hays (Deputy Leader of the Government):** Honourable senators, I give notice that tomorrow, Thursday, March 2, I will move:

That the Standing Joint Committee on the Library of Parliament be authorized to examine the expenditures set out in Parliament Vote 10; and that the Standing Joint Committee on Official Languages be authorized to examine the expenditures set out in Privy Council Vote 25 of the Estimates for the fiscal year ending March 31, 2001; and

That a message be sent to the House of Commons to acquaint that House accordingly.

#### PRIVACY COMMISSIONER

NOTICE OF MOTION TO EXTEND TERM OF APPOINTMENT

**Hon. Dan Hays (Deputy Leader of the Government):** Honourable senators, I give notice that tomorrow, Thursday, March 2, I will move:

That, in accordance with subsection 53 (3) of the Act to extend the present laws of Canada that protect the privacy of individuals and that provide individuals with a right of access to personal information about themselves, Chapter P-21 of the Revised Statutes of Canada 1985, the Senate approve the reappointment of Bruce Phillips as Privacy Commissioner for a term of four months, effective May 1, 2000.

### QUESTION PERIOD

#### AGRICULTURE AND AGRI-FOOD

FARM CRISIS IN PRAIRIE PROVINCES—RESPONSE OF GOVERNMENT

**Hon. Leonard J. Gustafson:** Honourable senators, even with last week's cash infusion, which was reiterated in yesterday's budget, nothing can change the fact that Canadian farmers are caught in an international subsidy war. Government subsidies for farmers in the U.S. are 40 per cent and in the European Union they are 56 per cent. That means 56 per cent of a European farmer's income comes from the government and 40 per cent of an American farmer's income comes from the government. That amounts to as much as \$44 billion. A Canadian farmer's income from the government is about 9 per cent of total income.

With present commodity prices, there will be a tremendous fallout for farmers. Has the government indicated any plans in addition to the small amount of money given recently, which I understand amounts to something like \$8,000 per farmer? Has the government given any indication what it intends to do about the crisis facing agriculture in rural Saskatchewan, rural Manitoba and parts of rural Alberta?

**Hon. J. Bernard Boudreau (Leader of the Government):** Honourable senators, I will not repeat the measures that have been taken since my appointment to the Senate a few months ago, but as the Honourable Senator Gustafson knows, those measures have been substantial. The honourable senator makes the point, and we would agree, that while the measures are substantial, they do not represent the full answer.

In comparing the incredible subsidies being paid by the European Community and by the United States to the subsidies received by Canadian farmers, it is a miracle our farmers can compete. Were it not for the incredible efficiency of our farming community, we would be even worse off than we are today.

When one looks at comparable subsidies, the present situation represents, among other things, a strong tribute to the farmers in Western Canada, particularly those who have faced this inequity for some considerable period of time. This imbalance is not a recent development. Our farmers have been competing against it and have done so successfully in most cases. That incredible subsidy imbalance is now combined with a series of bumper crops in virtually all of the producing jurisdictions, which makes the situation extremely difficult.



I do not know that we will ever be able to compete on a subsidy basis with other jurisdictions. In the international arena, therefore, it is even more important for us to deal with the issue of international subsidies. Our efforts to date have not yielded the success that both the honourable senator and I would wish, requiring us to make renewed efforts to address this huge subsidy imbalance.

FARM CRISIS IN PRAIRIE PROVINCES—POSSIBILITY OF INCOME  
AVERAGING AND EXTENSION OF FARM CREDIT

**Hon. Leonard J. Gustafson:** Honourable senators, if the Government of Canada were to support the grain and oilseed industry at even a percentage of the U.S. assistance, it would need to contribute about \$5 billion. Could the government not develop a reasonable program and contribute just a couple of billion dollars of real money every year to help save the industry? This country will get that money back many times over, but if those farmers go broke, our rural communities will disappear.

Honourable senators, a number of options are available. I will give the honourable leader one example and ask him to carry it to the cabinet.

In agricultural circles, we used to use a five-year income average. If a farmer was in trouble but had one good year, the averaging of income meant a tax savings. In other words, the income tax department would not take all the profit in a good year.

If a farmer cannot make the principal payment on his land for three consecutive years because of tough times, in a good year he still must pay tax on that principal payment. He can deduct interest and other expenses, but he cannot deduct the payment on his farm, which is in trouble. Would the government consider returning to that five-year average or reassessing farm credit for farmers who are in trouble?

**Hon. J. Bernard Boudreau (Leader of the Government):** Honourable senators, I appreciate again the expertise of the Honourable Senator Gustafson in this area. His interventions have helped me considerably in understanding the challenges for farmers in Western Canada and some of the possible areas of government action.

The honourable senator has raised the issue of farm credit before and has asked me to pass along his concerns. I have done that and will continue to do so.

I am not familiar with the issue of five-year averaging, but the senator makes an articulate and reasoned case. Without any

hesitation, I can give my undertaking to pass those comments along to both the Minister of Agriculture and other cabinet colleagues.

• (1350)

## BUDGET 2000

### LONG-TERM BENEFITS TO TAXPAYERS

**Hon. David Tkachuk:** Honourable senators, yesterday I asked what the tax savings under the new budget would be for a single person earning \$40,000 or \$45,000. Since we were not able to get all our questioning completed in Question Period yesterday, I sent a fax to the office of the Leader of the Government in the Senate requesting that information today.

**Hon. J. Bernard Boudreau (Leader of the Government):** Honourable senators, I have requested that information from the Department of Finance. Unfortunately, there was a bit of confusion about the year for which the information was being requested. I received some information, but I do not think it is the information the honourable senator requested. Therefore, I have asked for further information. I should be able to provide it by this time tomorrow.

The information I received was for 12 months forward from the date of the budget. I do not know whether the honourable senator was referring to the next calendar year.

**Senator Tkachuk:** Yes, to 2001.

**Senator Boudreau:** I should be able to have that information for the senator tomorrow.

**Senator Tkachuk:** Honourable senators, I found information on the Web site for an income of \$40,000, but I was not able to find anything for an income of \$45,000. Perhaps the leader could follow up on that part as well.

The Web site indicated that a single person earning \$40,000 a year would save about \$156 from July to December in the year 2000. However, that does not take into consideration that CPP contributions have increased by \$140. Therefore, there will be a \$16 saving for the year 2000. As my son said, "I can't keep my feet from dancing." He is so happy about that.

Next year, we really come into the big bucks because we have a 12-month period. The saving is \$314 on income of \$40,000, but you pay another \$140 in CPP contributions. Therefore, the savings total is \$174. The government is probably recouping that added expenditure just from the extra taxes it is collecting as a result of the increase in gas prices. That is nothing at all to Canadians, and as time goes on people will learn what is really in this budget.

Would the Leader of the Government in the Senate comment on the difference between what the Web site says, what the taxes and deductions really are, and what the net income really is?

**Senator Boudreau:** Honourable senators, the income tax reduction would, of course, depend on what assumptions you make and the individual's circumstances. The average tax reduction will be 15 per cent for all taxpayers in every category over the period of the program, an average of at least 18 per cent annually for low- and middle-income Canadians, and an average of at least 21 per cent annually for families with children.

For example, if the honourable senator's son is single with very few deductions, we can find out exactly what his tax savings will be for the calendar year 2001.

However, it represents a substantial tax saving overall, particularly for low- and middle-income families. This is very much a family focused reduction, combined as it is with an additional \$2.5 billion for the Canadian Child Tax Benefit. The amounts are substantial. In total they represent about \$58 billion, a virtually unprecedented amount.

With respect to the individual model on which the senator has requested clarification, I will get that information as soon as possible.

One of the problems with the Web site, I believe, is that it calculates on a 12-month period from the date of the budget. Very few people pay income tax that way. Most people pay on a calendar basis. I am sure I can get the information for the senator.

## INDUSTRY

### INCREASE IN FUEL PRICES

**Hon. Consiglio Di Nino:** Honourable senators, the Treasurer of Ontario, Ernie Eves, was quoted this morning as having said that he is looking at ways to reduce the provincial tax bite on gasoline. I believe he made a commitment that, as he is preparing his budget, he will look at ways of reducing the provincial portion of gasoline tax.

Has the federal government given any thought to reducing its tax on gasoline? Would the Leader of the Government, on behalf of the people of Canada, take that suggestion to the Minister of Finance and offer it as a means of providing relief for the thousands of truckers who are having tremendous difficulty making a living, as well as for Canadians generally?

**Hon. J. Bernard Boudreau (Leader of the Government):** Honourable senators, increased oil and gasoline prices are a matter of concern to the government. Three or four ministers are peripherally involved with this issue, all of whom have had discussions and are closely monitoring the situation. I will certainly pass along the honourable senator's suggestion. We will also watch with interest what the Government of Ontario does with respect to the provincial tax.

## HUMAN RESOURCES DEVELOPMENT

### THE BUDGET—RECORDING OF EMPLOYMENT INSURANCE AND CANADA PENSION PLAN PREMIUMS

**Hon. J. Bernard Boudreau (Leader of the Government):** Honourable senators, further to the previous question by the

Honourable Senator Tkachuk, the Web site to which the honourable senator referred, and from which information on the impact of tax reductions is generally available, excludes both changes in CPP premiums and EI premium reductions. That must be taken into account when calculating the gross amount of reductions.

**Hon. David Tkachuk:** Honourable senators, this budget contains different provisions for different time periods and is meant to confuse us all. Over the next little while, we will try to clarify the situation.

All honourable senators will remember that when we debated EI premiums here, we were repeatedly told that it was not a tax: "No, it is not a tax, not a tax, not a tax. It is not a tax." However, it is not a tax only when it is reduced a bit and thrown into the \$58 billion.

Regardless of whether or not it is a tax, could the Leader of the Government tell us why the EI reductions are included in the \$58 billion and the CPP increases are not articulated in the \$58 billion?

**Senator Boudreau:** I will have to check to see exactly what is included in the \$58 billion. I have not seen the detailed breakdown.

One must recognize the substantial reductions that have been made in EI premiums and the more substantial reductions that are scheduled over the term of the program outlined by the Finance Minister. Over time, EI premiums will be in the range of \$2, a level that was almost unthinkable a few years ago. Those premium reductions will be welcomed wherever they are found.

• (1400)

The Minister of Finance has adopted a reasonable approach in a multi-year budget situation. Over a multi-year period — up to 2004 in most cases — the minister has laid out a plan of what the government has committed to do. In subsequent public statements, he said that this represents the minimum that the government has committed to do. I take that statement seriously — that is, as circumstances change, these figures for tax reductions and for other programs may also change.

The Minister of Finance also indicated in his speech that while the minimum commitments he makes are stretched over a period of years, his budgeting is done on a two-year rolling target. One may expect, therefore, that he would be in a position to review all of these measures, including tax reductions, on an annual basis. As the country continues to improve economically and as the country continues to have record growth, then, indeed, we may be in a position to revise those figures. The commitment he has given to the people of Canada is that these are minimum measures and that the government is committed to following through on them.



## FOREIGN AFFAIRS

### LEVEL OF EMERGENCY PREPAREDNESS FOR CRISIS SITUATIONS AROUND THE WORLD

**Hon. Marcel Prud'homme:** Honourable senators, today is a special day. I am celebrating the fourteenth birthday of my great nephew. Young people sometimes ask questions that seem simple enough but often prove very difficult to answer. That leads me to ask the following question: Why is it so easy to mobilize the world when there is a war, yet it is so difficult to mobilize countries when a great tragedy occurs somewhere in the world? It has been said many times that we must be prepared for tragedies, yet it still surprises us when a tragedy happens. The continent that appears always to be the worst hit is Africa.

I am astounded, as all honourable senators must be, at the slow reaction to the current crisis in Mozambique. That country has only a few helicopters. However, if there was a war in that country, the response would be different.

Honourable senators may remember hours of debate on the war in Iraq. I remember discussing that situation with Senators Forrestall and Roche in the Foreign Affairs Committee. Emergency preparedness should be an issue not only for war but for world tragedies as well. We know that the entire infrastructure — and I am paraphrasing Senator Andreychuk — in Mozambique has been destroyed and that the country must start again from scratch.

Honourable senators, why is it so difficult to mobilize the world? If there is an event in the world to which Canada was meant to respond, it is the crisis developing in front of our eyes in Mozambique. I am not being partisan when I say that. I am not saying that we are doing nothing or that we are not doing enough. However, I am astonished that we are once again taken by surprise. Discussions of this sort have taken place in the Standing Senate Committee on Foreign Affairs for years and years. We should be prepared to respond with food and other supplies to emergencies around the world, instead of making people wait days and days for help.

Would the minister be kind enough to indicate briefly now, and in more detail later, how we can put in concrete form what I am asking of him today?

**Hon. J. Bernard Boudreau (Leader of the Government):** Honourable senators, Senator Prud'homme asks the most difficult question that has been put to me as Leader of the Government in the Senate. In certain circumstances, it is extremely difficult to understand why the world cannot be better prepared for these tragic situations. We see them on our television news almost instantly, but as the world mobilizes to deal with them — particularly the richer nations — there seems always to be a tragic and painful delay.

Honourable senators, I do not know that I can answer this question, except to say that in order to commit resources in advance of an actual tragedy, which is what the world and the rich countries must do, they would need to commit resources in an organized way.

**Senator Prud'homme:** Exactly.

**Senator Boudreau:** Against the backdrop of competing interests for those resources, there appears to be a lack of urgency at the time. When it is raining, someone may say that they cannot repair their leaky roof because of the rain, and when it is not raining, they may say that they do not need to make the repair. In many ways, we have a similar situation. If a circumstance is not in front of us, as a body politic and as a country, it is hard to commit those resources. However, the honourable senator makes the point very well, and I will pass it along to the Minister of Foreign Affairs and others.

### MOZAMBIQUE—EFFECT OF FLOODS ON POLITICAL SITUATION

**Hon. A. Raynell Andreychuk:** Honourable senators, I believe Senator Prud'homme's point is very timely. He is indicating that we spend an inordinate amount of money on humanitarian aid that is being deflected away from development aid. I think we can help in a more constructive way. We do not help by asking if there will be a flood in Mozambique. We know there are natural disasters and that the United Nations — and we should be taking the lead since we sit on the Security Council — should be conducting a certain amount of preparation in that regard. I am pleased to see CIDA doing just that. If we want to exercise an appropriate role, we should do so in the United Nations while we sit as president on the Security Council.

Mozambique came into its new state of democracy from a bloody civil war. It has been one of the bright spots in Africa but a very tenuous one. The new democracy was beginning to take hold, but this humanitarian disaster will wipe out all of the infrastructure and devastate the economy of Mozambique. That is a surefire recipe for continuing political turmoil for that is where political turmoil breeds.

Will the Government of Canada undertake, through its the Department of Foreign Affairs and through the Security Council, to follow up on the political situation in Mozambique? Such an approach will cost less than having to go into Mozambique to deal with human atrocities that are manmade, not natural.

**Senator Prud'homme:** That is a very good suggestion.

**Hon. J. Bernard Boudreau (Leader of the Government):** Honourable senators, the comments made by Senator Andreychuk and Senator Prud'homme are entirely reasonable and helpful. I would have no difficulty relaying them, along with my own in support of that approach, to the minister and to the government.

## HUMAN RESOURCES DEVELOPMENT

TRANSITIONAL JOBS FUND—  
GRANTS TO PLI ENVIRONMENT LTD.

**Hon. Donald H. Oliver:** Honourable senators, my question is for the Leader of the Government in the Senate and deals with the company involved in the failed Sysco cleanup project and their receipt of a grant from the Transitional Jobs Fund equalling three times the amount of funds requested. The *Halifax Daily Herald* has discovered, through documents released to them under the Access to Information Act, that PLI Environment Ltd. of Sydney sought a \$414,000 grant in 1997 and received \$1.26 million from Human Resources Development Canada. The documents do not reveal why the additional \$846,000 was awarded. Can the Leader of the Government explain why PLI Environment Ltd. was awarded three times the amount requested? Furthermore, can he determine if any documentation exists of an HRDC analysis of the Sysco cleanup project that justifies the significant increase in the amount of the funds awarded?

• (1410)

**Hon. J. Bernard Boudreau (Leader of the Government):** Honourable senators, I am generally familiar with the file to which the honourable senator refers and with the work that was done. However, I do not have at hand the details that he seeks. I shall seek those details and I hope to be able to share them with the honourable senator as early as tomorrow.

**Senator Oliver:** Honourable senators, if the leader is familiar with the details, can he shed some light on what this problem is about and why the company would receive three times the amount of the grant?

**Senator Boudreau:** As I said, honourable senators, I am not familiar with the details of the file. However, I am familiar with the work that was done. It was a project to put steelworkers to work to clean up the unused and derelict workings of Sydney steel. They have done that, but I am not sure to what extent.

As to the file itself, the applications, and how things developed along the lines that the honourable senator suggests, I will have to check. I will attempt to get that information specifically for the honourable senator and provide it to him.

TRANSITIONAL JOBS FUND—GRANTS TO  
PLI ENVIRONMENT LTD.—RCMP INVESTIGATION

**Hon. Donald H. Oliver:** Could the honourable leader tell us whether or not the RCMP are investigating the allegations that a company official paid Liberal supporters \$250,000 to secure the Sysco cleanup contract?

**Some Hon. Senators:** Shame! Shame!

**Hon. J. Bernard Boudreau (Leader of the Government):** Honourable senators, the RCMP is investigating that particular file. I do not know the details of it, but I am aware that there is such an investigation.

## NATIONAL DEFENCE

PROPOSAL TO DEVELOP BALLISTIC MISSILE DEFENCE SYSTEM  
WITH UNITED STATES—REQUEST FOR INFORMATION

**Hon. Douglas Roche:** Honourable senators, yesterday there was tabled in the Senate a delayed answer to my question to the Leader of the Government last week on Canada's examination of the missile defence system proposed by the United States. The answer is composed of three paragraphs which state, in effect, that Canada is studying this question. I already know that. I asked: What are they studying? What is the documentation involved in the study? I asked for documentation and nothing has been forthcoming.

Today, General George Macdonald is in the news saying that such a system might be the death of NORAD. He says that this is the most serious military issue facing both countries. If the military are debating this proposal and the House of Commons committee is examining the subject, why is the Senate being kept in the dark on this crucial question?

Will the Leader of the Government table in the Senate the relevant material so that senators can be informed on the nature of the debate before the Canadian government makes up its mind and it becomes almost impossible to change the decision?

**Hon. J. Bernard Boudreau (Leader of the Government):** Honourable senators, I am in a position to undertake that any information made available to the Commons committee dealing with this issue will be made available to the Senate as well. I will have members of my staff check on that matter.

I cannot, however, commit to providing all documentation that may be involved with respect to the consideration of this subject by the department. I have no way of knowing at this stage what all of that information might include and whether any of it might be classified or, in some other way, unavailable to public view. However, I certainly will seek any of the information that has been given to the Commons committee.

PROPOSAL TO DEVELOP BALLISTIC MISSILE DEFENCE SYSTEM  
WITH UNITED STATES—REQUEST FOR FORMAL DEBATE

**Hon. Douglas Roche:** Honourable senators, that is a start, namely, getting the information that is available to the other place. However, why does the government not introduce a debate on this subject right here in the Senate? A considered debate in the Senate, based on authoritative documentation that is available, would help the government by indicating to the United States the considered view of the Senate on this subject. It is being described by a Canadian general as the most serious military issue now facing both countries.



**Hon. J. Bernard Boudreau (Leader of the Government):** Honourable senators, if I could provide that information in a timely way, both to the honourable senator and to any other senator who wishes such information, it would then be open to the honourable senator to initiate such a debate himself in this chamber. Any members wishing to participate and actively be involved in such a debate could then do so. I encourage the honourable senator to initiate such a debate, if that is his wish.

**The Hon. the Speaker:** Honourable Senator Roche, I wish to warn you that Question Period has almost ended. I have room for one more questioner. Please make your question brief.

**Senator Roche:** Honourable senators, I was afraid that that would be the answer. I am only one senator here initiating debate. This is a national issue of deep concern to the government as well as the entire Senate. I want to know why the government cannot introduce a motion or resolution so that it becomes a government-sponsored debate. Everyone will then take it seriously.

**Senator Boudreau:** If such a debate were initiated by any member of the Senate, it would be taken seriously by myself and by the government.

[Translation]

## BUDGET 2000

### ALLOCATION FOR CANADA HEALTH AND SOCIAL TRANSFER PROGRAM

**Hon. Fernand Roberge:** Honourable senators, at the fourth annual conference of provincial premiers, held in Quebec City in August 1999, the premiers and the territorial leaders called upon the government to fully restore funding under the Canada Health and Social Transfer to the 1994-95 level and to include a suitable indexation formula for CHST transfers to reflect increased costs and pressure on services.

Yesterday, the Minister of Finance refused to comply with this legitimate request by the provincial premiers. Although cash transfers to the provinces will increase by \$2.5 billion over the next 4 years, to \$15.5 billion, they remain below the 1994-95 level of \$18.7 billion. What is more, there has been no indexation of these transfers to the inflation rate and the rising cost of operating the health and education systems. Yet there is a crying need, and that need will continue to grow as the population ages and as the Canadian economy becomes increasingly knowledge-based.

Why is the Minister of Finance refusing to respond to the request of the provincial premiers and not fully restoring the level of cash transfers to the provinces?

[English]

**Hon. J. Bernard Boudreau (Leader of the Government):** Honourable senators, the Minister of Finance indicated clearly that transfer payments to the provinces have been restored when one considers the combination of tax points, cash transfers and, in the case of Quebec and Nova Scotia, equalization. In the upcoming fiscal year, they will reach an all-time high.

Honourable senators, I have some figures here with respect to Quebec. For example, in this upcoming year, the cash transfers will increase to \$4.123 billion from \$3.939 billion. The tax points will increase in value, as will the total major transfers. This fiscal year they will increase from \$11.361 billion to \$11.540 billion. They continue to rise in 2001-02, in 2002-03, and in 2003-04. In fact, they increase in every year of the plan that was outlined by the Minister of Finance. I am referring here specifically to Quebec, but I have figures for other provinces as well.

• (1420)

The total major transfers to the provinces have been restored and will continue to increase over the next four years. Historically, there has been a debate — and I was at one time on the other side of the debate — with respect to tax points. However, there is no question that the restoration has occurred and that the transfers will continue to grow.

That is not to say that the plan that I have just outlined for Quebec, or other provinces, will be the whole answer, because, in the areas of health and education particularly, there are other federal programs. The Minister of Finance clearly indicated, on the question of health funding, for example, an openness to looking at the problem and the challenges for our systems at even greater length. He indicated that, if such a common strategy could be developed with the provinces and the federal government, he would be there. If I am quoting him correctly, he said he would be there with the money.

I am sure the honourable senator knows that, in these areas of health and education, there are very sensitive jurisdictional questions involved. Quebec is particularly sensitive about those jurisdictional questions. However, I think there is room, both through the increased transfers and other joint programs, to have an impact in the next fiscal year and beyond.

[Translation]

**Senator Roberge:** Honourable senators, we are aware of the increases expected in all subsequent years, but the level of cash transfers is still far from what it was in 1994 and 1995. Let us try a new option.

Would a change in the funding formula for transfers in the form of tax points ensure that the provinces have stable funding for health care services, social services and education? Would the Leader of the Government not agree that this would prevent the federal government from interfering in provincial jurisdictions by unilaterally creating new programs through its spending power?

English]

**Senator Boudreau:** Honourable senators, that is a good question. The honourable senator raises an issue which has been debated back and forth in this country for as long as I can remember: whether in fact it would not be better to transfer tax points instead of cash payments, be done with it, and then allow the provinces to proceed.

**Senator Lynch-Staunton:** Whose side are you on?

**Senator Boudreau:** That view is held by some, but definitely not held by others. In fact, in my own province, I do not think there would be much support for that approach, for a number of reasons.

On the one hand, some provinces say you cannot count tax points, that they really should not be addressed when one considers transfers. On the other, some provinces say, "Forget the cash. Give us tax points." That in itself is illustrative of the value of those tax points.

That debate is likely to continue for some time. Coming from a province such as mine, I do not know that I would be particularly enthusiastic about trading cash for tax points.

**Senator Lynch-Staunton:** Not before the next election, anyway.

## DELAYED ANSWER TO ORAL QUESTION

**Hon. Dan Hays (Deputy Leader of the Government):** Honourable senators, yesterday I tabled a response to a question raised by Senator Murray on February 23, regarding the clarity of the division of provinces. I thank Senator Murray for drawing my attention to certain errors in the citation of the statute, including its date and I believe a section reference. I should like to thank the honourable senators, to table a corrected version of that response.

## INTERGOVERNMENTAL AFFAIRS

### CLARITY BILL—DIVISIBILITY OF PROVINCES

(Response to question raised by Hon. Lowell Murray on February 23, 2000)

Bill C-20 does not deal with the creation of new provinces but rather the secession of a province from Canada. The legislation adheres closely to decision of the Supreme Court of Canada in the *Quebec Secession Reference* which concluded that all issues including borders would be on the table in negotiations on secession. As long as a province remains part of Canada, its borders cannot be changed without its consent by virtue of section 43 of the *Constitution Act, 1982*. Thus, Nova Scotia is not "divisible" if it remains in Canada unless the Nova Scotia government agrees to its division.

Furthermore, section 42(1)(f) provides that the establishment of new provinces would require the consent of at least seven provinces representing at least fifty percent of the population. Finally, under section 3 of the *Constitution Act of 1871* and subsection 43(a) of the *Constitution Act of 1982*, no modification may be effected to the borders of a province without the consent of that province.

## FOREIGN AFFAIRS

### NOTICE OF MOTION TO AUTHORIZE COMMITTEE TO EXTEND DATE OF FINAL REPORT ON STUDY OF CHANGING MANDATE OF THE NORTH ATLANTIC TREATY ORGANIZATION

Leave having been given to revert to Notices of Motions:

**Hon. Peter A. Stollery:** Honourable senators, I give notice that, on Thursday March 2, 2000, I will move:

That, notwithstanding the Orders of the Senate adopted on Thursday, October 14, 1999, on Wednesday, November 17, 1999, and on Thursday, December 16, 1999, the Standing Senate Committee on Foreign Affairs which was authorized to examine and report upon the ramifications to Canada: 1. of the changed mandate of the North Atlantic Treaty Organization (NATO) and Canada's role in NATO since the demise of the Warsaw Pact, the end of the Cold War and the recent addition to membership in NATO of Hungary, Poland and the Czech Republic; and 2. of peacekeeping, with particular reference to Canada's ability to participate in it under the auspices of any international body of which Canada is a member, be empowered to present its final report no later than April 14, 2000; and

That the Committee retain all powers necessary to publicize the findings of the Committee contained in the final report until April 28, 2000; and

That the Committee be permitted, notwithstanding usual practices, to deposit its report with the Clerk of the Senate, if the Senate is not then sitting; and that the report be deemed to have been tabled in the Chamber.

## BUSINESS OF THE SENATE

### POINT OF ORDER—SPEAKER'S RULING

**The Hon. the Speaker:** Honourable senators, on Tuesday, February 22, as we reached the Orders of the Day, Senator Taylor raised a point of order regarding certain words that had been used by Senator Angus during Question Period.



[Translation]

The following day, Senator Gauthier was given leave to continue the debate at my request, since I was not in the Chair the day before and wanted to hear the opinions of the honourable senators.

I thank all those senators who took part in this most interesting debate. Faced with a question that might appear quite simple, I wondered exactly what authority the Speaker of the Senate has over such a question.

[English]

I remind honourable senators that the position of the Speaker in this place is very different from that of the Speaker in the other place. The practice and long-established custom is that senators regulate themselves, and that the Speaker has a limited responsibility insofar as interfering. I will admit the rule does provide, in case of serious conditions, that the Speaker can interfere, but normally that rule is not followed.

Also, I should like to remind honourable senators of the rule indicating when points of order can be presented. This issue was raised at that time because Senator Taylor had stood up earlier while we were still in Question Period. The practice that we have followed is as the rule states, that there are no points of order or questions of privilege during Question Period and Routine Business, and that normally, we will entertain them only after the Speaker has called Orders of the Day. Once Orders of the Day have been called, it is proper to come forward with either points of order or questions of privilege, unless it is a case where notice was given by letter previously. I should like to have that established as a clear practice so that there will be no difficulties.

I come back to the points that were raised. I will read directly from the *Debates of the Senate*. The objections raised by Honourable Senator Taylor and Honourable Senator Gauthier were to statements made by Honourable Senator Angus. I refer to page 671, where Senator Angus is reported to have said:

...after Minister Stewart had been caught with her hand in the cookie jar.

On page 672, Senator Angus said:

Instead of integrity, we have seen a minister and a Prime Minister misleading the public day after day.

• (1430)

I should like to refer honourable senators to Beauchesne's. I point out that this whole question of unparliamentary language is not necessarily as simple as it may appear. I refer honourable senators to paragraph 486(1), which states:

It is impossible to lay down any specific rules in regard to injurious reflections uttered in debate against particular

Members, or to declare beforehand what expressions are or are not contrary to order; much depends upon the tone and manner, and intention, of the person speaking; sometimes upon the person to whom the words are addressed, as, whether that person is a public officer, or a private Member not in office, or whether the words are meant to be applied to public conduct or to private character; and sometimes upon the degree of provocation, which the Member speaking had received from the person alluded to; and all these considerations must be attended to at the moment, as they are infinitely various and cannot possibly be foreseen in such a manner that precise rules can be adopted with respect to them.

(2) An expression which is deemed to be unparliamentary today does not necessarily have to be deemed unparliamentary next week.

(3) There are few words that have been judged to be unparliamentary consistently, and any list of unparliamentary words is only a compilation of words that at some time have been found to cause disorder in the House.

I wish as well to quote from what is the newest book on parliamentary practice. It is entitled *House of Commons Procedure and Practice*. I am most conscious that the practice and procedures of the House of Commons do not regulate ours. However, when ours are silent, we do use theirs. This latest book, written by the present Clerk and the Assistant Clerk of the House of Commons, states at page 526:

The codification of unparliamentary language has proven impractical as it is the context in which words or phrases are used that the Chair must consider when deciding whether or not they should be withdrawn.

With that background, honourable senators will see that making a precise determination is not the easiest thing to do. I remind honourable senators again as to the custom and practices of this house. We are members of a house which always has taken the position that we be polite to each other. We treat each other with respect. We address each other as individuals, and I refer to each honourable senator by name. It is a very different context from that in the House of Commons. One has only to compare the Question Period in the other place with the Question Period in this place to see that. I make no criticism in that regard. They are a different house. We must remain ever conscious of the language that we use and that that language should always be respectful of each other.

The specific words that were used, namely, having one's "hand in the cookie jar," may not be a very polite description of one's activities. It may not be the best wording that could be used. However, it can always be interpreted as meaning a slight misdemeanour, someone who has been caught doing something that they ought not to have done. It is not necessarily dishonest. I think there are different ways of interpreting that phrase.

However, when I come to the next statement, I must confess that I am somewhat more disturbed, in particular, given that earlier Senator Angus is reported to have said:

The cover-up is not working, honourable senators.

He then said:

Instead of integrity, we have seen a minister and a Prime Minister misleading the public day after day.

If honourable senators will refer again to Beauchesne's, they will find that the word "misleading" as mentioned in paragraph 489 has been ruled unparliamentary on many occasions under the following headings: attempted to misrepresent, deliberately misled, deliberately misleading, misled and misleading the public. However, to confuse the issue, paragraph 490 sets out words that have been ruled parliamentary. Under that paragraph, we find the words "misleading" and "misled". There is no clear rule.

I return to my comment that it is important in this house that we treat each other with respect. It is equally important when we speak to persons outside this house, particularly those who cannot respond, that we treat them with respect. I have also been told about some of the statements that have been made about senators by people in the other place. That should not affect the way in which we function in this chamber.

Having said that, honourable senators, the rules indicate that as speaker I have no authority in this matter. I do not have, as the House of Commons has, the authority to name a senator. If I did have that authority, I would have no means of enforcing it. It is up to the chamber.

Honourable senators, I can only say to you that it is up to each of us to make a determination in regard to such matters. Accusing a member of the other place of deliberately misleading is not a term that we should use.

Perhaps a discussion that took place in the Legislative Assembly of Nova Scotia might give some insight into the problem. There, Mr. MacLellan, from the opposition, said after an honourable minister had spoken, "Mr. Speaker, I hope the next time the Minister of Health goes to see Ravine, he does not leave until he comes out of hypnosis." The Speaker replied, "Order, please. Not only was it unparliamentary, but it was not nice." The speaker then added, "I know the Honourable Leader of the Liberal Party wants to retract." Mr. MacLellan stated, "I do not mind being unparliamentary, but I certainly do not want to not be nice. You really hit me in a soft spot."

I leave it to Senator Angus.

[Translation]

• (1440)

## ORDERS OF THE DAY

### INTERNATIONAL SEARCH OR SEIZURE BILL

#### SECOND READING—DEBATE CONTINUED

On the Order:

Resuming debate on the motion of the Honourable Senator Nolin, seconded by the Honourable Senator Kinsella, for the second reading of Bill S-4, to provide for judicial preauthorization of requests to be made to a foreign or international authority or organization for a search or seizure outside Canada.—(*Honourable Senator Cools*).

**Hon. Noël A. Kinsella (Deputy Leader of the Opposition):** Honourable senators, I am pleased today to support Bill S-4, to provide for judicial preauthorization of requests to be made to a foreign or international authority or organization for a search or seizure outside Canada. This private bill was sponsored by Senator Pierre Claude Nolin.

To begin with, I must say that this bill takes its inspiration from the conclusions of the Supreme Court of Canada in *Schreiber*. As you know, section 8 of the Canadian Charter of Rights and Freedoms stipulates that every Canadian has the right to be secure against unreasonable search or seizure.

The primary purpose of Bill S-4 is to clarify an important question of law with respect to the application of section 8. Clause 3 of Bill S-4 reads as follows:

Before making a request to a foreign or international authority or organization for a search or seizure outside Canada for the purpose of an investigation of an offence, a competent authority shall apply to a judge or justice for an order authorizing the request.

The purpose of this provision is to protect individuals in Canada from unreasonable search or seizure outside Canada. When a citizen is under investigation in connection with an alleged infraction of a federal law, the attorney general concerned will have to obtain preauthorization from a judge, as is the case for an investigation within Canada. This will have to be done before requesting the assistance of authorities in another country in connection with the seizure of documents located in that country.

Some of you think that this will mean that the privacy provisions of the Canadian Charter of Rights and Freedoms will be imposed on other countries when there is a request for assistance during criminal investigations. I wish to reassure you immediately that this bill has no extraterritorial application.



In Canada, Canadians are protected by the Canadian Charter of Rights and Freedoms. According to the dissenting opinion of Mr. Justice Iacobucci of the Supreme Court in *Schreiber*, these rights can be protected by the Charter outside Canada in certain exceptional circumstances.

I remind you that what upset Karl H. Schreiber was the preparation and sending of a letter by Department of Justice officials asking Swiss authorities for legal assistance, before first obtaining a court warrant. The purpose of that request was to check and to seize Mr. Schreiber's bank accounts. Since these accounts are documents of a very personal nature that could have an impact on his privacy, Mr. Justice Iacobucci concluded that these agents were clearly subject to Canadian law. This includes the Charter within Canada and, in most cases, outside Canada. So these people were covered by section 32 of the Charter, which provides that the Charter applies to the Parliament and Government of Canada in respect of all matters within the authority of Parliament, including all matters relating to the Yukon Territory and Northwest Territories. It also applies to the legislature and government of each province in respect of all matters within the authority of the legislature of each province.

Therefore, honourable senators, we can conclude that the Department of Justice officials were acting as representatives of the executive branch of the Government of Canada. Moreover, since they were Canadians, there was no reason to take into account the international courtesy that is displayed in most cases where such a request is made. They could, therefore, be expected to know Canadian law, including the Constitution. It was not unreasonable to demand that they respect it. This is particularly true of the agents who were acting on behalf of the Attorney General and who, for that reason, may have had additional duties because of the particular nature of this responsibility.

Honourable senators, as you can see, each individual attaches great importance to his or her privacy and to the means available to protect it. The nature of privacy is such that when it is violated, it can rarely be fully recovered.

Consequently, in order for section 8 to properly protect an individual's reasonable expectation of privacy, it must take effect prior to the search or seizure and before information is disclosed. Without that protection, honourable senators, there would be but very little value in guaranteeing the right to privacy if it merely applied, after the fact, to information that had already been obtained wrongfully. The principle of a reasonable expectation of privacy was defined by Mr. Justice Dickson in 1984 in the famous *Hunter* decision. It implies that an individual is entitled to expect the government to take all necessary steps to respect his right to privacy as guaranteed by the Charter. This is the case when public servants exchange, process or request information concerning that individual.

Law enforcement authorities must be sensitive to the individual's right to have his privacy respected in connection with the body of personal biographical data relating to him.

The existence of a reasonable expectation of privacy sets in motion the guarantees set out in section 8 of the Charter. When such an expectation exists, and it is threatened by a planned

intrusion by government, the law enforcement authorities are required to obtain legal authorization before acting.

However, honourable senators, clearly, each case is different. This is why clause 4 of Bill S-4 requires the judge or other competent authority hearing an *ex parte* application to determine that the application meets the standards established under the Canadian Charter of Rights and Freedoms. If so, he may make an order authorizing the request to be made, pursuant to clause 5 of the bill.

Honourable senators, it is my opinion, in light of previous requests, that this process of prior legal authorization can be properly administered without any significant costs to the federal government. According to Justice Canada figures given in the statement under oath accompanying the brief by the Solicitor General in *Schreiber*, Canada made 72 such applications in 1992, 80 in 1993, 137 in 1994, 109 in 1995 and 87 in 1996. We do not have the figures for more recent years, but I trust that Justice officials will be able to provide them to us by the time this bill goes to committee.

In conclusion, Bill S-4 will require the application of section 8 of the Canadian Charter of Rights and Freedoms when it may help to discourage the repetition of unconstitutional conduct by Canadian officials, even though the conduct of these officials causes a foreign country to provide help. The provisions of the bill will ensure that Canada may not impose its own laws on other countries. However, the bill will ensure that the right to privacy is protected in cases of searches of persons or property, in Canada or abroad, at the request of Canadian officials.

On motion of Senator Hays, for Senator Cools, debate adjourned.

[English]

• (1450)

## FINANCING OF POST-SECONDARY EDUCATION

### INQUIRY—DEBATE CONTINUED

On the Order:

Resuming debate on the inquiry of the Honourable Senator Atkins calling the attention of the Senate to the financing of post-secondary education in Canada and particularly that portion of the financing that is borne by students, with a view to developing policies that will address and alleviate the debt load which post-secondary students are being burdened with in Canada.—(Honourable Senator Hays).

**Hon. Lois M. Wilson:** Honourable senators, I received consent from Senator Hays to speak to the inquiry launched by Senator Atkins into the financing of post-secondary education in Canada, particularly that portion of the financing that is borne by students with a view to developing policies that will address and alleviate the debt load which post-secondary students are being burdened with in Canada.

Today, I should like to address the financial crisis facing both graduate students and those presently enrolled in post-secondary institutions as a result of the high cost of education after high school. I speak primarily for the newer northern universities in Ontario that do provide a basic undergraduate education for thousands of students who otherwise would be denied such advantage.

As of 1999, the number of new Canadian university students projected in the coming decade is 89,000, many of whom will be upon the universities in the next two or three years. A number of factors point to an historic surge in the demand for university education in Canada. Half of this increase is attributed, first, to the "echo" generation of baby boomers, which is the natural demographic growth that can be counted quite readily — these people are in the schools now; second, to an increasing participation rate, which is the proportion of university-age students who actually enrol in university, and this continues to increase; and, third, the impact of secondary school reform, which is a four-year high school program in Ontario. The "double cohort," as it is called, will have the effect of moving the anticipated increase ahead by several years, and it will be felt in particular in 2003 and 2004.

Universities face a massive 20 per cent increase in demand for student places over the next 10 years. They currently have a limited capacity to meet this upsurge, both financially and in terms of faculty. It is pretty clear that universities are starving financially and that the Canada Health and Social Transfer block grants are a considerable part of the problem, affecting as they do the transfer payments being made to universities by the provinces.

Honourable senators, governments have reduced their spending on higher education by 27 per cent during the last eight years, forcing universities to alter their fee structures and their faculty members. Currently, the lack of funding is being felt in the classroom. In that period, tuition fees have more than doubled, a clear indication that a much higher proportion of the cost of university is borne by the students. Yet higher fees only offset about half of the lost government support. Higher tuition fees have contributed to a levelling off of the number of students. The number of part-time students, who are price sensitive, has declined dramatically. This creates an accessibility issue with poorer students being disadvantaged.

Provincial funding per student in Ontario is lower than in any other province in Canada. While responsibility for providing post-secondary education rests primarily with provincial governments, the federal government has traditionally supported this need through transfer payments to the provinces.

An Angus Reid poll conducted from January 27 to February 2 of this year found that 55 per cent of respondents felt that

politicians should make education their second priority after health care, followed by tax reduction.

The \$2.5 billion included in the budget to be split between health needs and education is not enough to rectify the problem on an ongoing or sustainable basis. Moreover, according to the Association of Universities and Colleges of Canada, the number of professors has declined by 11 per cent since 1992. By 2010, universities will need to hire more than 12,000 new full-time faculty members to meet the enrolment crunch and maintain quality and 20,000 to replace those who retire. Yet today there are only 33,000 professors in all universities across Canada.

Let us look at Lakehead University in Thunder Bay. That institution was established in 1965 and is therefore a comparatively new arrival to the higher education landscape. Yet it is the only university in northwestern Ontario and, through distance education, covers an area larger than France. Its 6,585 students include full-time graduates and undergraduate students. More than half its students come from outside northwestern Ontario. This includes 5,308 full-time graduate and undergraduate students. The university is a major employer in the city of Thunder Bay and includes 600 full-time jobs. Lakehead University represents a strong economic engine for that part of Ontario. It boasts a forestry program unique to Canada. It services a sparsely populated area that contains more than 50 per cent of the total land mass of the province. A large percentage of the population is of aboriginal origin from small, remote communities accessible only by air or winter roads, where there is a much lower-than-average level of education and staggering economic and social difficulties. Yet, the university fared well on the 1998-99 government performance indicators and placed second in the country in the "value added" category of *Maclean's* magazine.

Between 1992 and 1998, operating grants made possible through federal transfers to Lakehead University have decreased by 27 per cent and tuition has more than doubled. The much higher proportion of costs now being borne by students creates a huge accessibility issue with less affluent students being seriously disadvantaged.

In the 10-year period between 1988 and 1999, revenue from tuition has increased from 19 per cent to 41 per cent, while revenue from grants has decreased from 77 per cent to 55 per cent.

Northern universities such as Lakehead operate under a formula that relies on what is called an approved enrolment "corridor" and governmental fiscal allocations. Each institution has an enrolment corridor for the purpose of determining its share of formula grants. The last adjustment to corridors was done a decade ago. The corridor under which Lakehead operates is not adequate to allow the university to operate effectively and efficiently as a comprehensive institution with the range of professional, core and science programs necessary to meet its regional mandate.



Since 1992, Lakehead has been over its corridor — that is, it has had too high a student enrolment. Consequently, 30 per cent of its students are outside its funding corridor; thus, no support is received for these students through government grants. This results in foregone grant income of approximately \$6.5 million annually. This precludes Lakehead University from keeping pace with southern institutions and cripples its ability to provide comparable social and economic prosperity that comes with an educated population. Yet the intellectual capacity of shared interest, outreach programming research and partnerships with government and industry can and do provide a strategic advantage to northwestern Ontario that is dependent on the presence of Lakehead University.

• (1500)

Maintaining a high enrolment level at Lakehead became increasingly important during the period of dramatic government cuts in the mid-1990s. These actions were necessitated by economies of scale and with the expectation that corridors would be revisited to address the anomalies in the system. To date, this has not happened. Lakehead University, therefore, finds itself in an impossible situation. As a northern university far from the centre of political and economic influence, unless it can count on the assistance of governments, its future as a vibrant participant in the Ontario university system is at risk. It has not yet had enough history to develop a responsive and affluent alumni. It cannot compete equitably on the basis of population density or geography. It must look to government to create a level playing field.

Further, there is the matter of research and development. The budget announcement of additional funding for the Canada Innovation Foundation is very welcome. However, universities still must continue to develop a full range of programs and research opportunities. Anything less would seriously disadvantage its constituents. In Northern Ontario, an intensified need has been placed on health related matters of late, especially in regard to training doctors and health care professionals for the north. Renewed vigour was placed on addressing this need in the initiative by the university of donating land for a regional hospital next to the university, and as a result of continuing issues with northern health care. Much remains to be done and money is needed for research in areas that universities believe to be important and necessary.

As we enter an era of budgetary surpluses, there must be a financial commitment to a certain guaranteed level of funding to universities by the federal government in terms of the funding it is willing to pay to the provinces for post-secondary education. There must be a comparable ongoing level of funding to make post-secondary education accessible to all who are academically qualified, particularly those in financial need. There should be much more than a one-time millennium fund announced by the Minister of Finance two years ago. I support an ongoing and

sustainable commitment to the funding of students who wish to attend a learning institution beyond high school.

How these ideas and commitments are to be implemented surely could be the topic of a study by an informed Senate committee. The crisis will not automatically disappear in the near future. Indeed it will worsen. The time to act is now.

On motion of Senator Hays, debate adjourned.

## ENERGY, THE ENVIRONMENT AND NATURAL RESOURCES

MOTION TO AUTHORIZE COMMITTEE TO REVIEW CANADIAN  
ENVIRONMENTAL PROTECTION ACT—DEBATE CONTINUED

On the Order:

Resuming debate on the motion of the Honourable Senator Spivak, seconded by the Honourable Senator Andreychuk:

That the Standing Senate Committee on Energy, the Environment and Natural Resources begin immediately a review of the Canadian Environmental Protection Act as unanimously recommended in the Committee's Seventh Report dated September 8, 1999, and tabled in the Senate the following day.—(*Honourable Senator Taylor*).

**Hon. Nicholas W. Taylor:** Honourable senators, this item has been on the Order Paper for some time. By leaving it on the Order Paper, the impression is created that the government has done nothing about the recommendation of the Standing Senate Committee on Energy, the Environment and Natural Resources.

To refresh the memories of those who may not follow this as if it were the greatest thing to happen in this house for some time, I remind you that the committee reported after lengthy hearings on the energy and environment bill during last summer. As a matter of fact, we called the Senate back to vote on this item, Bill C-32, in order to get the environmental bill through.

You may recall that the chairman of the committee, Senator Ghitter, and the deputy chairman, myself, had an argument. The result was that there was some problem in filing a majority report, which resulted in a minority report as well. The majority report contained one comment that is comparable to the motion by Senator Spivak, that the committee majority was pleased with the provision that continues to call for a review every five years. It recommended the government begin the next review immediately after the passage of Bill C-32.

Bill C-32 was then passed, and I have before me a news release from December 14, 1999, which the minister issued. It notes that the act requires that a comprehensive review of the provisions be undertaken no later than five years after coming into force. The minister was commencing that process as of that date. In other words, the Senate's recommendation to Bill C-32 for immediate review has been followed.

Once again it shows that the Senate does have some effect. Honourable senators may wish to go home and discuss with environmentalists, at least, the fact that the Senate is doing its job, and that the minister did listen.

Consequently, this item is redundant. It was not mischievous. Sometimes, being an old opposition member myself, we would put motions on the Order Paper that the government had already dealt with in some fashion so the press would pick it up thinking the government had not done anything. Otherwise, why would we put it on the Order Paper? That is not the case here. There was simply not an awareness that the minister and the government had indeed acceded to the wishes of the Senate in this majority report and was starting the process of review.

Consequently, honourable senators, I recommend that we move ahead and vote on the motion.

**Hon. John Lynch-Staunton (Leader of the Opposition):** Honourable senators, I support what Senator Taylor has said. This motion was brought before the Senate before the government had decided on the review. Hopefully, it has served its purpose, and perhaps it should be withdrawn.

To follow the Speaker's advice about respect and courtesy, we should allow Senator Spivak to confirm that it is her wish, as mover of the motion, to have it voted on or withdrawn in light of the fact the government has agreed to begin a review of Bill C-32.

I believe Senator Spivak should confirm what I think is the proper course, and it should be done under her name as mover of the motion.

**Senator Taylor:** I would agree. I must confess that trying to fit Senator Spivak's schedule with mine is difficult. However, that is fine. We had talked about it. She may wish another opportunity to speak to the matter.

On motion of Senator Kinsella, debate adjourned.

[Translation]

## HUMAN RIGHTS AND MULTI-ETHNIC CONFLICTS

### INQUIRY

On the Order:

Resuming debate on the inquiry of the Honourable Senator Kinsella calling the attention of the Senate to human rights and multi-ethnic conflicts.—(*Honourable Senator Beaudoin*).

**Hon. Gérald-A. Beaudoin:** Honourable senators, the inquiry by our honourable colleague Senator Noël Kinsella gives us the

opportunity to examine the issue of rights and freedoms, including the rights and freedoms of ethnic minorities.

I should like to say a few words about section 27 of the 1982 Charter and the protection of rights outside our country.

The preservation and enhancement of the multicultural heritage of Canadians is provided for in section 27 of the Charter, which reads as follows:

This Charter shall be interpreted in a manner consistent with the preservation and enhancement of the multicultural heritage of Canadians.

• (1510)

The highest court in the land dealt with this section in a few cases.

In *Big M. Drug Mart*, the Supreme Court concluded that the Lord's Day Act, which is a federal law, respects the division of powers, but violates the freedom of religion and does not comply with the preservation and enhancement of the multicultural heritage of Canadians, as provided in section 27 of the charter.

The purpose of section 27 is, of course, to show that while Canada is a bilingual country at the federal level and in certain provinces, it inherited a specific multicultural heritage that must be taken into account.

In the *Edwards Books* case, which dealt with a weekly day of rest, the Supreme Court ruled that the provinces can legislate on the weekly rest period and that this respects the freedom of religion in Canada.

Similarly, in *Keegstra*, Mr. Chief Justice Dickson used section 27 of the Charter to show the reasonableness of the Criminal Code provisions that prohibit hate propaganda. He said:

...I am of the belief that section 27 and the commitment to a multicultural vision of our nation bear notice in emphasizing the acute importance of the objective of eradicating hate propaganda from society...

When the prohibition of expressive activity that promotes hatred of groups identifiable on the basis of colour, race, religion, or ethnic origin is considered in light of section 27, the legitimacy and substantial nature of the government objective is therefore considerably strengthened.

Professor Magnet wrote the following about section 27 of the Charter:

This section provides flexibility to the Charter in those cases where the full exercise of individual rights threatens the survival of certain cultural communities. Section 27 allows to shape the development of the Charter in response to the specific requirements of binationality and cultural pluralism, which may be the most significant features of a very singular cultural society.



I would now like to say a few words about international rights and freedoms.

I believe that we must protect rights and freedoms internationally, as we do nationally, through charters, judicial independence, and independent bars, which are, in my view, the cornerstone of democracies.

I had the good fortune to examine this issue in Cameroon. A few years ago, at the instigation of its former president, Mr. Justice Robert Wells, the executive committee of the Canadian Bar Association formed a Canada-Cameroon committee.

This committee's mandate was to develop a model charter of rights and freedoms in a developing country. Cameroon was asked to take part in the project because of the similarities between this country and Canada, particularly from a legal and a linguistic point of view. Cameroon has two official languages, English and French, as well as a bijural legal system — civil law and common law.

The committee examined a vast array of human rights documents: the Canadian Charter of Rights and Freedoms, Canada's various provincial human rights charters, United Nations international instruments, the Charter of African Unity, and provisions for human rights and freedoms in the constitutions of a majority of African countries.

In addition to several meetings of its members, the committee held two official meetings, the first a two-day meeting in Ottawa, and the second a four-day meeting in Yaoundé.

The model charter of rights and freedoms recommended by the committee covers the following points: fundamental freedoms, democratic rights, the freedom to move and gain a livelihood, legal guarantees, equality rights, protection of official languages, economic, social and cultural rights, certain collective rights, and the protection of other rights and freedoms. This model charter has no notwithstanding clause; however, since rights and freedoms cannot be absolute, it includes an exclusionary clause similar to section 1 of the Canadian Charter of Rights and Freedoms, but adapted to the context.

An examination of a number of constitutional systems shows that control of the constitutionality of legislation is essential. Without this verification by an independent judicial authority, the very principle of respecting human rights would be hard to imagine.

The committee recommended an innovative system for respecting human rights in which the independent bar plays a primary role.

Human rights are much more than treasures exhibited in a showcase; they are the very essence of an individual's quality of life. They, therefore, take precedence over collective, non-individual, responsibility. December 10, 1998 was the 50th anniversary of the Universal Declaration of Human Rights,

the passage of which was the final stage in a long process. That process will, of course, continue as long as respect for the dignity of all human beings everywhere on this planet is not ensured.

This document is not intended as a dead letter, but as something that will become an instrument of positive action to encourage all freedom-loving people to devote their energies to seeing that human rights are respected.

Canada has a role to play in the area of human rights on the international level.

[English]

• (1520)

**Hon. Noël A. Kinsella (Deputy Leader of the Opposition):** Honourable senators, Senator Beaudoin drew our attention not only to section 27 of our Charter, which mandates that all rights within our Charter must be interpreted in a manner consistent with our multicultural heritage, but he also drew our attention to international human rights instruments.

My question relates to a "communication" or a complaint sent to the United Nations Human Rights Committee regarding the refusal of the Ontario government to pay for any religious schools other than those in the separate school system. The human rights committee of the United Nations, under the Covenant on Civil and Political Rights, found Canada to be in violation of that treaty obligation.

A provision in the Constitution Act, 1982, raised as part of the negotiations, would protect the traditional constitutional right from 1867 on separate schools. Can my honourable friend comment on that? How can Canada restore its reputation and prove that it is complying with its treaty obligations in this case of conflict with constitutional rights?

[Translation]

**Senator Beaudoin:** Honourable senators, I read that in the newspapers, and it piqued my interest, but the answer is very simple. From a constitutional point of view, we are bound by the Canadian Charter of Rights and Freedoms, and heaven knows we take it very seriously. Four hundred charter-related cases were heard by the Supreme Court of Canada over a period of a few years.

The Supreme Court has always said that one part of the Constitution does not negate another part of the Constitution. Section 93 of the Constitution, which deals with denominational rights for Ontario, Quebec and other provinces enshrined in it, 1867, respects both denominational rights and the Charter of Rights and Freedoms.

A constitutional amendment was made some time ago for Quebec and Newfoundland. I voted in favour of the constitutional amendment, because that was probably the thing to do in the modern context. The constitutional amendment was adopted. The Province of Ontario is not affected by it: section 93 of the Constitution clearly protects denominational rights.

The notion that one part of the Constitution does not amend another is perfectly logical, otherwise, there would be endless debates. We must explain this to the United Nations and debate the issue at the appropriate time and place.

[English]

**Hon. Jack Austin:** Honourable senators, perhaps Senator Beaudoin could he enlighten us as to whether the federal government has any power under the Constitution to enter into an international treaty that could in any way change the constitutional powers of a province?

**Senator Beaudoin:** Can the federal government enter into an international treaty that encroaches on the powers of the provinces?

A treaty does not change the law of the land in our country. The federal authority has full power to enter into a treaty because Ottawa is representing the whole country. However, the treaty does not become the law of the land in this country — and England has the same mechanism — unless there is an implementation of the treaty by a statute. If the treaty relates to a provincial matter, only the province can implement the treaty.

We have administrative arrangements with the provinces. Suppose we sign a treaty in a field governed by the provinces, such as education. There is no doubt that we can adopt the treaty. There is also no doubt that, to give effect to the treaty or to implement it, we must respect the division of powers between Ottawa and the provinces.

Perhaps the honourable senator had something else in mind in his question. I am not sure. How can we have a treaty that encroaches on another jurisdiction? We may have a treaty that is related to the provincial powers, but we have the right to enter into such a treaty. To implement the treaty, we follow the division of powers.

**Senator Austin:** When the United States enters into a formal treaty, it does encroach on the powers of the individual states. We do not have that power in Canada and I just wanted that to be clear to our colleagues.

**Senator Beaudoin:** Honourable senators, there is a difference between Canada and the United States. In the United States, after a treaty is signed by the President or the Secretary of State, it then goes before the Senate. If the Senate agrees to the treaty, it becomes the law of the land. If the Senate does not agree, the treaty does not become the law of the land.

**Hon. Serge Joyal:** Honourable senators, I echo the intervention of Senator Kinsella concerning the international instruments and their implementation in Canadian legislation.

[Translation]

Honourable senators, since the adoption of the Canadian Charter of Rights and Freedoms, international instruments on economic, civil and political rights have removed a certain

number of rights coming under the jurisdiction of the provinces and the Parliament of Canada. In the past, these rights could be interpreted as coming under provincial jurisdiction. They are now recognized in the Canadian Charter of Rights and Freedoms and are not covered by the laws of the provinces or the Government of Canada.

Does the honourable senator not think that the provisions of international instruments defining civil, economic and political rights could be incorporated into the Charter and given the force of law in Canada to the extent that they are an integral part of the provisions protected by the Charter? I am excluding civil property rights, which come under provincial jurisdiction.

**The Hon. the Speaker:** Honourable senators, I am sorry to interrupt. It will soon be 3.30 p.m. and, under the *Rules of the Senate*, I must declare the Senate adjourned and leave the Chair.

[English]

**Hon. Dan Hays (Deputy Leader of the Government):** Honourable senators, I ask leave that the Speaker not see the clock for five minutes to allow us to complete this exchange and to deal with the two motions before us.

**The Hon. the Speaker:** Honourable senators, is leave granted?

**Hon. Senators:** Agreed.

[Translation]

**Senator Beaudoin:** It is difficult to answer that question briefly. Signing an international treaty leaves us with a moral obligation to legislate.

If a treaty contradicts certain provincial rights, would the treaty take precedence over the Constitution of Canada? My first reaction would be to say not, because the division of powers between Ottawa and the provinces is at the heart of our Canadian federal system.

• (1530)

Let us take the example of denominational rights. As these rights are protected in some provinces, if a treaty were signed and an obvious contradiction arose, for example, with respect to freedom of religion, then we might wonder whether that would take precedence over national legislation. My first reaction is to say it cannot change the country's Constitution. Furthermore, the provinces may be protected as follows: if the Civil Code or provincial jurisdictions were involved, a province could decide not to implement the treaty, which would remain a dead letter.

As the issue involves so many areas, I would like to give it further thought in order to answer properly. There is no doubt that a treaty is signed by Ottawa and is implemented in accordance with the division of powers; that is simple. However, when there is a contradiction between a treaty and our Constitution, it is not so simple, but I have always thought that our Constitution took precedence.



**The Hon. the Speaker:** Honourable senators, if no other senator wishes to speak on this inquiry, the debate is adjourned.

[English]

#### THE SENATE

CLERK AUTHORIZED TO PAY WITNESS TRAVEL EXPENSES

**Hon. Dan Hays (Deputy Leader of the Government),** pursuant to notice of February 29, 2000, moved:

That the Clerk of the Senate be authorized to pay the travel expenses of Mr. Wesley Cragg and Ms Bronwyn Best of Transparency International Canada, who appeared before the Committee of the Whole on December 3, 1998, during its study of Bill S-21, respecting the corruption of foreign public officials and the implementation of the Convention on Combating Bribery of Foreign Public Officials in International Business Transactions, and to make related amendments to other Acts.

Motion agreed to.

#### ABORIGINAL PEOPLES

COMMITTEE AUTHORIZED TO ENGAGE SERVICES

**Hon. Jack Austin,** pursuant to notice of February 29, 2000, moved:

That the Standing Senate Committee on Aboriginal Peoples have power to engage the services of such counsel and technical, clerical and other personnel as may be necessary for the purpose of its examination and consideration of such bills, subject matters of bills and estimates as are referred to it.

Motion agreed to.

The Senate adjourned until tomorrow at 2 p.m.

## **APPENDIX**

Officers of the Senate

The Ministry

Senators

(Listed according to seniority, alphabetically and by provinces)

Committees of the Senate



**THE SPEAKER**

THE HONOURABLE GILDAS L. MOLGAT

**THE LEADER OF THE GOVERNMENT**

THE HONOURABLE J. BERNARD BOUDREAU, P. C.

**THE LEADER OF THE OPPOSITION**

THE HONOURABLE JOHN LYNCH-STAUTON

---

**OFFICERS OF THE SENATE****CLERK OF THE SENATE AND CLERK OF THE PARLIAMENTS**

PAUL BÉLISLE

**DEPUTY CLERK, PRINCIPAL CLERK, LEGISLATIVE SERVICES**

GARY O'BRIEN

**LAW CLERK AND PARLIAMENTARY COUNSEL**

MARK AUDCENT

**USHER OF THE BLACK ROD**

MARY McLAREN

# THE MINISTRY

According to Precedence

(March 1, 2000)

The Right Hon. Jean Chrétien	Prime Minister
The Hon. Herbert Eser Gray	Deputy Prime Minister
The Hon. Lloyd Axworthy	Minister of Foreign Affairs
The Hon. David M. Collenette	Minister of Transport
The Hon. David Anderson	Minister of the Environment
The Hon. Ralph E. Goodale	Minister of Natural Resources and Minister responsible for the Canadian Wheat Board
The Hon. Sheila Copps	Minister of Canadian Heritage
The Hon. John Manley	Minister of Industry
The Hon. Paul Martin	Minister of Finance
The Hon. Arthur C. Eggleton	Minister of National Defence
The Hon. Anne McLellan	Minister of Justice and Attorney General of Canada
The Hon. Allan Rock	Minister of Health
The Hon. Lawrence MacAulay	Solicitor General of Canada
The Hon. Alfonso Gagliano	Minister of Public Works and Government Services
The Hon. Lucienne Robillard	President of the Treasury Board and Minister responsible for Infrastructure
The Hon. Martin Cauchon	Minister of National Revenue and Secretary of State (Economic Development Agency of Canada for the Regions of Quebec)
The Hon. Jane Stewart	Minister of Human Resources Development
The Hon. Stéphane Dion	President of the Queen's Privy Council for Canada and Minister of Intergovernmental Affairs
The Hon. Pierre Pettigrew	Minister of International Trade
The Hon. Don Boudria	Leader of the Government in the House of Commons
The Hon. J. Bernard Boudreau	Leader of the Government in the Senate
The Hon. Lyle Vancilief	Minister of Agriculture and Agri-Food
The Hon. Herb Dhaliwal	Minister of Fisheries and Oceans
The Hon. Claudette Bradshaw	Minister of Labour
The Hon. George Baker	Minister of Veterans Affairs and Secretary of State (Atlantic Canada Opportunities Agency)
The Hon. Robert Daniel Nault	Minister of Indian Affairs and Northern Development
The Hon. Maria Minna	Minister for International Cooperation
The Hon. Elinor Caplan	Minister for Citizenship and Immigration
The Hon. Ethel Blondin-Andrew	Secretary of State (Children and Youth)
The Hon. Raymond Chan	Secretary of State (Asia-Pacific)
The Hon. Hedy Fry	Secretary of State (Multiculturalism) (Status of Women)
The Hon. David Kilgour	Secretary of State (Latin America and Africa)
The Hon. James Scott Peterson	Secretary of State (International Financial Institutions)
The Hon. Ronald J. Duhamel	Secretary of State (Western Economic Diversification) and Francophonie
The Hon. Andrew Mitchell	Secretary of State (Rural Development) (Federal Economic Development Initiative for Northern Ontario)
The Hon. Gilbert Normand	Secretary of State (Science, Research and Development)
The Hon. Denis Coderre	Secretary of State (Amateur Sport)



## SENATORS OF CANADA ACCORDING TO SENIORITY

(March 1, 2000)

Senator	Designation	Post Office Address
THE HONOURABLE		
Herbert O. Sparrow .....	Saskatchewan .....	North Battleford, Sask.
Gildas L. Molgat, Speaker .....	Ste-Rose .....	Winnipeg, Man.
Edward M. Lawson .....	Vancouver .....	Vancouver, B.C.
Bernard Alasdair Graham, P.C. ....	The Highlands .....	Sydney, N.S.
Raymond J. Perrault, P.C. ....	North Shore-Burnaby .....	North Vancouver, B.C.
Louis-J. Robichaud, P.C. ....	L'Acadie-Acadia .....	Saint-Antoine, N.B.
Jack Austin, P.C. ....	Vancouver South .....	Vancouver, B.C.
Willie Adams .....	Nunavut .....	Rankin Inlet, Nunavut
Lowell Murray, P.C. ....	Pakenham .....	Ottawa, Ont.
C. William Doody .....	Harbour Main-Bell Island ....	St. John's, Nfld.
Peter Alan Stollery .....	Bloor and Yonge .....	Toronto, Ont.
Peter Michael Pitfield, P.C. ....	Ontario .....	Ottawa, Ont.
William McDonough Kelly .....	Port Severn .....	Mississauga, Ont.
E. Leo Kolber .....	Victoria .....	Westmount, Que.
Michael Kirby .....	South Shore .....	Halifax, N.S.
Jerahmiel S. Grafstein .....	Metro Toronto .....	Toronto, Ont.
Anne C. Cools .....	Toronto-York .....	Toronto, Ont.
Charlie Watt .....	Inkerman .....	Kuujuuaq, Que.
Daniel Phillip Hays .....	Calgary .....	Calgary, Alta.
Joyce Fairbairn, P.C. ....	Lethbridge .....	Lethbridge, Alta.
Colin Kenny .....	Rideau .....	Ottawa, Ont.
Pierre De Bané, P.C. ....	De la Vallière .....	Montreal, Que.
Eymard Georges Corbin .....	Grand-Sault .....	Grand-Sault, N.B.
Brenda Mary Robertson .....	Riverview .....	Shediac, N.B.
Jean-Maurice Simard .....	Edmundston .....	Edmundston, N.B.
Michel Cogger .....	Lauson .....	Knowlton, Que.
Norman K. Atkins .....	Markham .....	Toronto, Ont.
Ethel Cochrane .....	Newfoundland .....	Port-au-Port, Nfld.
Eileen Rossiter .....	Prince Edward Island .....	Charlottetown, P.E.I.
Mira Spivak .....	Manitoba .....	Winnipeg, Man.
Roch Bolduc .....	Golfe .....	Sainte-Foy, Que.
Gérald-A. Beaudoin .....	Rigaud .....	Hull, Que.
Pat Carney, P.C. ....	British Columbia .....	Vancouver, B.C.
Gerald J. Comeau .....	Nova Scotia .....	Church Point, N.S.
Consiglio Di Nino .....	Ontario .....	Downsview, Ont.
Donald H. Oliver .....	Nova Scotia .....	Halifax, N.S.
Noël A. Kinsella .....	New Brunswick .....	Fredericton, N.B.
John Buchanan, P.C. ....	Nova Scotia .....	Halifax, N.S.
Mabel Margaret DeWare .....	New Brunswick .....	Moncton, N.B.
John Lynch-Staunton .....	Grandville .....	Georgeville, Que.
James Francis Kelleher, P.C. ....	Ontario .....	Sault Ste. Marie, Ont.
J. Trevor Eyton .....	Ontario .....	Caledon, Ont.
Wilbert Joseph Keon .....	Ottawa .....	Ottawa, Ont.
Michael Arthur Meighen .....	St. Marys .....	Toronto, Ont.
Normand Grimard .....	Quebec .....	Noranda, Que.
Thérèse Lavoie-Roux .....	Quebec .....	Montreal, Que.
J. Michael ForreSTALL .....	Dartmouth and Eastern Shore .	Dartmouth, N.S.
Janis Johnson .....	Winnipeg-Interlake .....	Winnipeg, Man.
Eric Arthur Bernston .....	Saskatchewan .....	Saskatoon, Sask.
A. Raynell Andreychuk .....	Regina .....	Regina, Sask.
Jean-Claude Rivest .....	Stadacona .....	Quebec, Que.
Ronald D. Ghitler .....	Alberta .....	Calgary, Alta.
Terrance R. Stratton .....	Red River .....	St. Norbert, Man.

## ACCORDING TO SENIORITY

Senator	Designation	Post Office Address
THE HONOURABLE		
Marcel Prud'homme, P.C.	La Salle	Montreal, Que.
Fernand Roberge	Saurel	Ville Saint-Laurent, Que.
Leonard J. Gustafson	Saskatchewan	Macoun, Sask.
Erminie Joy Cohen	New Brunswick	Saint John, N.B.
David Tkachuk	Saskatchewan	Saskatoon, Sask.
W. David Angus	Alma	Montreal, Que.
Pierre Claude Nolin	De Salaberry	Quebec, Que.
Marjory LeBreton	Ontario	Manotick, Ont.
Gerry St. Germain, P.C.	Langley-Pemberton-Whistler	Maple Ridge, B.C.
Lise Bacon	De la Durantaye	Laval, Que.
Sharon Carstairs	Manitoba	Victoria Beach, Man.
London Pearson	Ontario	Ottawa, Ont.
Jean-Robert Gauthier	Ottawa-Vanier	Ottawa, Ontario
John G. Bryden	New Brunswick	Bayfield, N.B.
Rose-Marie Losier-Cool	New Brunswick	Bathurst, N.B.
Céline Hervieux-Payette, P.C.	Bedford	Montreal, Que.
William H. Rompkey, P.C.	Newfoundland	North West River, Labrador, Nfld.
Lorna Milne	Peel County	Brampton, Ont.
Marie-P. Poulin	Northern Ontario	Ottawa, Ont.
Shirley Maheu	Rougemont	Ville Saint-Laurent, Que.
Nicholas William Taylor	Sturgeon	Bon Accord, Alta.
Léonce Mercier	Mille Isles	Saint-Élie d'Orford, Que.
Wilfred P. Moore	Stanhope St./Bluenose	Chester, N.S.
Lucie Pépin	Shawinigan	Montreal, Que.
Fernand Robichaud, P.C.	New Brunswick	Saint-Louis-de-Kent, N.B.
Catherine S. Callbeck	Prince Edward Island	Central Bedeque, P.E.I.
Marisa Ferretti Barth	Repentigny	Pierrefonds, Que.
Berge Joyal, P.C.	Kennebec	Montreal, Que.
Helma J. Chalifoux	Alberta	Morinville, Alta.
Joan Cook	Newfoundland	St. John's, Nfld.
Gloss Fitzpatrick	Okanagan-Similkameen	Kelowna, B.C.
The Very Reverend Dr. Lois M. Wilson	Toronto	Toronto, Ont.
Francis William Mahovlich	Toronto	Toronto, Ont.
Calvin Woodrow Ruck	Dartmouth	Dartmouth, N.S.
Richard H. Kroft	Manitoba	Winnipeg, Man.
Douglas James Roche	Edmonton	Edmonton, Alta.
Joan Thorne Fraser	De Lorimier	Montreal, Que.
Jurélien Gill	Wellington	Mashteuiatsh, Pointe-Bleue, Que.
Yvienne Poy	Toronto	Toronto, Ont.
Heila Finestone, P.C.	Montarville	Montreal, Que.
One Christensen	Yukon	Whitehorse, Yukon Territory
George Furey	Newfoundland	St. John's, Nfld.
Felvin Perry Poirier	Prince Edward Island	St. Louis, P.E.I.
Nick G. Sibbeston	Northwest Territories	Fort Simpson, N.W.T.
Nobel Finnerty	Ontario	Burlington, Ont.
Bernard Boudreau, P.C.	Nova Scotia	Halifax, N.S.



## SENATORS OF CANADA

## ALPHABETICAL LIST

(March 1, 2000)

Senator	Designation	Post Office Address
THE HONOURABLE		
Adams, Willie	Nunavut	Rankin Inlet, Nunavut
Andreychuk, A. Raynell	Regina	Regina, Sask.
Angus, W. David	Alma	Montreal, Que.
Atkins, Norman K.	Markham	Toronto, Ont.
Austin, Jack, P.C.	Vancouver South	Vancouver, B.C.
Bacon, Lise	De la Durantaye	Laval, Que.
Beaudoin, Gérald-A.	Rigaud	Hull, Que.
Berntson, Eric Arthur	Saskatchewan	Saskatoon, Sask.
Bolduc, Roch	Golfe	Sainte-Foy, Que.
Boudreau, J. Bernard, P.C.	Nova Scotia	Halifax, N.S.
Bryden, John G.	New Brunswick	Bayfield, N.B.
Buchanan, John, P.C.	Nova Scotia	Halifax, N.S.
Callbeck, Catherine S.	Prince Edward Island	Central Bedeque, P.E.I.
Carney, Pat, P.C.	British Columbia	Vancouver, B.C.
Carstairs, Sharon	Manitoba	Victoria Beach, Man.
Chalifoux, Thelma J.	Alberta	Morinville, Alta.
Christensen, Ione	Yukon Territory	Whitehorse, Yukon Territory
Cochrane, Ethel	Newfoundland	Port-au-Port, Nfld.
Cogger, Michel	Lauzon	Knowlton, Que.
Cohen, Erminie Joy	New Brunswick	Saint John, N.B.
Comeau, Gerald J.	Nova Scotia	Church Point, N.S.
Cook, Joan	Newfoundland	St. John's, Nfld.
Cools, Anne C.	Toronto-York	Toronto, Ont.
Corbin, Eymard Georges	Grand-Sault	Grand-Sault, N.B.
De Bané, Pierre, P.C.	De la Vallière	Montreal, Que.
De Ware, Mabel Margaret	New Brunswick	Moncton, N.B.
Di Nino, Consiglio	Ontario	Downsview, Ont.
Dood, C. William	Harbour Main-Bell Island	St. John's, Nfld.
Eyton, J. Trevor	Ontario	Caledon, Ont.
Fairbairn, Joyce, P.C.	Lethbridge	Lethbridge, Alta.
Ferretti Barth, Marisa	Repentigny	Pierrefonds, Que.
Finestone, Sheila, P.C.	Montarville	Montreal, Que.
Finnerty, Isobel	Ontario	Burlington, Ont.
Fitzpatrick, Ross	Okanagan-Similkameen	Kelowna, B.C.
Forrestall, J. Michael	Dartmouth and Eastern Shore	Dartmouth, N.S.
Fraser, Joan Thorne	De Lorimier	Montreal, Que.
Furey, George	Newfoundland	St. John's, Nfld.
Gauthier, Jean-Robert	Ottawa-Vanier	Ottawa, Ont.
Ghitter, Ronald D.	Alberta	Calgary, Alta.
Gill, Aurélien	Wellington	Mashteuiatsh, Pointe-Bleue, Que.
Grafstein, Jeremiah S.	Metro Toronto	Toronto, Ont.
Graham, Bernard Alasdair, P.C.	The Highlands	Sydney, N.S.
Grimard, Normand	Quebec	Noranda, Que.
Gustafson Leonard J.	Saskatchewan	Macoun, Sask.
Hays, Daniel Phillip	Calgary	Calgary, Alta.
Hervieux-Payette, Céline, P.C.	Bedford	Montreal, Que.
Johnson, Janis	Winnipeg-Interlake	Winnipeg, Man.
Joyal, Serge, P.C.	Kennebec	Montreal, Que.
Kelleher, James Francis, P.C.	Ontario	Sault Ste. Marie, Ont.
Kelly, William McDonough	Port Severn	Mississauga, Ont.
Kenny, Colin	Rideau	Ottawa, Ont.
Keon, Wilbert Joseph	Ottawa	Ottawa, Ont.
Kinsella, Noël A.	New Brunswick	Fredericton, N.B.

Senator	Designation	Post Office Address
THE HONOURABLE		
Kirby, Michael	South Shore	Halifax, N.S.
Kolber, E. Leo	Victoria	Westmount, Que.
Kroft, Richard H.	Manitoba	Winnipeg, Man.
Lavoie-Roux, Thérèse	Quebec	Montreal, Que.
Lawson, Edward M.	Vancouver	Vancouver, B.C.
LeBreton, Marjory	Ontario	Manotick, Ont.
Losier-Cool, Rose-Marie	New Brunswick	Bathurst, N.B.
Lynch-Staunton, John	Grandville	Georgetown, Que.
Maheu, Shirley	Rougemont	Ville Saint-Laurent, Que.
Mahovlich, Francis William	Toronto	Toronto, Ont.
Meighen, Michael Arthur	St. Marys	Toronto, Ont.
Mercier, Léonce	Mille Isles	Saint-Élie d'Orford, Que.
Milne, Lorna	Peel County	Brampton, Ont.
Molgat, Gildas L. Speaker	Ste-Rose	Winnipeg, Man.
Moore, Wilfred P.	Stanhope St./Bluenose	Chester, N.S.
Murray, Lowell, P.C.	Pakenham	Ottawa, Ont.
Nolin, Pierre Claude	De Salaberry	Quebec, Que.
Oliver, Donald H.	Nova Scotia	Halifax, N.S.
Pearson, Landon	Ontario	Ottawa, Ontario
Pépin, Lucie	Shawinigan	Montreal, Que.
Perrault, Raymond J., P.C.	North Shore-Burnaby	North Vancouver, B.C.
Perry Poirier, Melvin	Prince Edward Island	St. Louis, P.E.I.
Pitfield, Peter Michael, P.C.	Ontario	Ottawa, Ont.
Poulin, Marie-P.	Northern Ontario	Ottawa, Ont.
Poy, Vivienne	Toronto	Toronto, Ont.
Prud'homme, Marcel, P.C.	La Salle	Montreal, Que.
Rivest, Jean-Claude	Stadacona	Quebec, Que.
Roberge, Fernand	Sauvel	Ville Saint-Laurent, Que.
Robertson, Brenda Mary	Riverview	Shediac, N.B.
Robichaud, Fernand, P.C.	New Brunswick	Saint-Louis-de-Kent, N.B.
Robichaud, Louis-J., P.C.	L'Acadie-Acadia	Saint-Antoine, N.B.
Roche, Douglas James	Edmonton	Edmonton, Alta.
Rompkey, William H., P.C.	Newfoundland	North West River, Labrador
Rossiter, Eileen	Prince Edward Island	Charlottetown, P.E.I.
Ruck, Calvin Woodrow	Dartmouth	Dartmouth, N.S.
St. Germain, Gerry, P.C.	Langley-Pemberton-Whistler	Maple Ridge, B.C.
Stibbeston, Nick	Northwest Territories	Fort Simpson, N.W.T.
Simard, Jean-Maurice	Edmundston	Edmundston, N.B.
Starrow, Herbert O.	Saskatchewan	North Battleford, Sask.
Stivak, Mira	Manitoba	Winnipeg, Man.
Stollery, Peter Alan	Bloor and Yonge	Toronto, Ont.
Stratton, Terrance R.	Red River	St. Norbert, Man.
Saylor, Nicholas William	Sturgeon	Bon Accord, Alta.
Schuk, David	Saskatchewan	Saskatoon, Sask.
Satt, Charlie	Inkerman	Kuujuuaq, Que.
Wilson, The Very Reverend Dr. Lois M.	Toronto	Toronto, Ont.



# SENATORS OF CANADA

## BY PROVINCE AND TERRITORY

(March 1, 2000)

**ONTARIO—24**

Senator	Designation	Post Office Address
THE HONOURABLE		
1 Lowell Murray, P.C. ....	Pakenham .....	Ottawa
2 Peter Alan Stollery .....	Bloor and Yonge .....	Toronto
3 Peter Michael Pitfield, P.C. ....	Ontario .....	Ottawa
4 William McDonough Kelly .....	Port Severn .....	Missassauga
5 Jerahmiel S. Grafstein .....	Metro Toronto .....	Toronto
6 Anne C. Cools .....	Toronto-York .....	Toronto
7 Colin Kenny .....	Rideau .....	Ottawa
8 Norman K. Atkins .....	Markham .....	Toronto
9 Consiglio Di Nino .....	Ontario .....	Downsview
10 James Francis Kelleher, P.C. ....	Ontario .....	Sault Ste. Marie
11 John Trevor Eyton .....	Ontario .....	Caledon
12 Wilbert Joseph Keon .....	Ottawa .....	Ottawa
13 Michael Arthur Meighen .....	St. Marys .....	Toronto
14 Marjory LeBreton .....	Ontario .....	Manotick
15 Landon Pearson .....	Ontario .....	Ottawa
16 Jean-Robert Gauthier .....	Ottawa-Vanier .....	Ottawa
17 Lorna Milne .....	Peel County .....	Brampton
18 Marie-P. Poulin .....	Northern Ontario .....	Ottawa
19 The Very Reverend Dr. Lois M. Wilson .....	Toronto .....	Toronto
20 Francis William Mahovlich .....	Toronto .....	Toronto
21 Vivienne Poy .....	Toronto .....	Toronto
22 Isobel Finnerty .....	Ontario .....	Burlington
23 .....	.....	.....
24 .....	.....	.....

## SENATORS BY PROVINCE AND TERRITORY

## QUEBEC—24

Senator	Designation	Post Office Address
THE HONOURABLE		
1 E. Leo Kolber	Victoria	Westmount
2 Charlie Watt	Inkerman	Kuujuaq
3 Pierre De Bané, P.C.	De la Vallière	Montreal
4 Michel Cogger	Lauzon	Knowlton
5 Roch Bolduc	Golfe	Sainte-Foy
6 Gérald-A. Beaudoin	Rigaud	Hull
7 John Lynch-Staunton	Grandville	Georgeville
8 Jean-Claude Rivest	Stadacona	Quebec
9 Marcel Prud'homme, P.C.	La Salle	Montreal
10 Fernand Roberge	Sauvel	Ville de Saint-Laurent
1 W. David Angus	Alma	Montreal
2 Pierre Claude Nolin	De Salaberry	Quebec
3 Lise Bacon	De la Durantaye	Laval
4 Céline Hervieux-Payette, P.C.	Bedford	Montreal
5 Shirley Maheu	Rougemont	Ville de Saint-Laurent
6 Léonce Mercier	Mille Isles	Saint-Élie d'Orford
7 Lucie Pépin	Shawinigan	Montreal
8 Marisa Ferretti Barth	Repentigny	Pierrefonds
9 Serge Joyal, P.C.	Kennebec	Montreal
10 Joan Thorne Fraser	De Lorimier	Montreal
1 Aurélien Gill	Wellington	Mashteuiatsh, Pointe-Bleue
2 Sheila Finestone, P.C.	Montarville	Montreal
3		
4		



## SENATORS BY PROVINCE—MARITIME DIVISION

## NOVA SCOTIA—10

Senator	Designation	Post Office Address
THE HONOURABLE		
1 Bernard Alasdair Graham, P.C.	The Highlands	Sydney
2 Michael Kirby	South Shore	Halifax
3 Gerald J. Comeau	Nova Scotia	Church Point
4 Donald H. Oliver	Nova Scotia	Halifax
5 John Buchanan, P.C.	Nova Scotia	Halifax
6 J. Michael Forrestall	Dartmouth and Eastern Shore	Dartmouth
7 Wilfred P. Moore	Stanhope St./Bluenose	Chester
8 Calvin Woodrow Ruck	Dartmouth	Dartmouth
9 J. Bernard Boudreau, P.C.	Nova Scotia	Halifax
10		

## NEW BRUNSWICK—10

THE HONOURABLE		
1 Louis-J. Robichaud, P.C.	L'Acadie-Acadia	Saint-Antoine
2 Eymard Georges Corbin	Grand-Sault	Grand-Sault
3 Brenda Mary Robertson	Riverview	Shediac
4 Jean-Maurice Simard	Edmundston	Edmundston
5 Noël A. Kinsella	New Brunswick	Fredericton
6 Mabel Margaret DeWare	New Brunswick	Moncton
7 Erminie Joy Cohen	New Brunswick	Saint John
8 John G. Bryden	New Brunswick	Bayfield
9 Rose-Marie Losier-Cool	New Brunswick	Bathurst
10 Fernand Robichaud, P.C.	New Brunswick	Saint-Louis-de-Kent

## PRINCE EDWARD ISLAND—4

THE HONOURABLE		
1 Eileen Rossiter	Prince Edward Island	Charlottetown
2 Catherine S. Callbeck	Prince Edward Island	Central Bedeque
3 Melvin Perry Poirier	Prince Edward Island	St. Louis
4		

## SENATORS BY PROVINCE—WESTERN DIVISION

## MANITOBA—6

	Senator	Designation	Post Office Address
	THE HONOURABLE		
1	Gildas L. Molgat, Speaker	Ste-Rose	Winnipeg
2	Mira Spivak	Manitoba	Winnipeg
3	Janis Johnson	Winnipeg-Interlake	Winnipeg
4	Terrance R. Stratton	Red River	St. Norbert
5	Sharon Carstairs	Manitoba	Victoria Beach
6	Richard H. Kroft	Manitoba	Winnipeg

## BRITISH COLUMBIA—6

	THE HONOURABLE		
1	Edward M. Lawson	Vancouver	Vancouver
2	Raymond J. Perrault, P.C.	North Shore-Burnaby	North Vancouver
3	Jack Austin, P.C.	Vancouver South	Vancouver
4	Pat Carney, P.C.	British Columbia	Vancouver
5	Gerry St. Germain, P.C.	Langley-Pemberton-Whistler	Maple Ridge
6	Ross Fitzpatrick	Okanagan-Similkameen	Kamloops

## SASKATCHEWAN—6

	THE HONOURABLE		
1	Herbert O. Sparrow	Saskatchewan	North Battleford
2	Eric Arthur Berntson	Saskatchewan	Saskatoon
3	A. Raynell Andreychuk	Regina	Regina
4	Leonard J. Gustafson	Saskatchewan	Macoun
5	David Tkachuk	Saskatchewan	Saskatoon
6			

## ALBERTA—6

	THE HONOURABLE		
1	Daniel Phillip Hays	Calgary	Calgary
2	Joyce Fairbairn, P.C.	Lethbridge	Lethbridge
3	Ronald D. Ghitter	Alberta	Calgary
4	Nicholas William Taylor	Sturgeon	Bon Accord
5	Thelma J. Chalifoux	Alberta	Morinville
6	Douglas James Roche	Edmonton	Edmonton



## SENATORS BY PROVINCE AND TERRITORY

## NEWFOUNDLAND—6

Senator	Designation	Post Office Address
THE HONOURABLE		
1 C. William Doody .....	Harbour Main-Bell Island ....	St. John's
2 Ethel Cochrane .....	Newfoundland .....	Port-au-Port
3 William H. Rompkey, P.C. ....	Newfoundland .....	North West River, Labrador
4 Joan Cook .....	Newfoundland .....	St. John's
5 George Furey .....	Newfoundland .....	St. John's
6 .....		

## NORTHWEST TERRITORIES—1

THE HONOURABLE		
1 Nick G. Sibbeston .....	Northwest Territories .....	Fort Simpson

## NUNAVUT—1

THE HONOURABLE		
1 Willie Adams .....	Nunavut .....	Rankin Inlet

## YUKON TERRITORY—1

THE HONOURABLE		
1 Ione Christensen .....	Yukon Territory .....	Whitehorse

## DIVISIONAL SENATORS

Senator	Designation	Post Office Address
THE HONOURABLE		
1 Normand Grimard .....	Quebec .....	Noranda, Que.
2 Thérèse Lavoie-Roux .....	Quebec .....	Montreal, Que.



# ALPHABETICAL LIST OF STANDING, SPECIAL AND JOINT COMMITTEES

(As of March 1, 2000)

\*Ex Officio Member

## ABORIGINAL PEOPLES

**Chair:** Honourable Senator Austin

**Deputy Chair:** Honourable Senator St. Germain

Honourable Senators:

Andreychuk, Christensen,  
Austin, DeWare,  
\*Boudreau, Gill,  
(or Hays) Johnson,  
Chalifoux,

\*Lynch-Staunton, St. Germain,  
(or Kinsella) Tkachuk,  
Pearson, Watt.  
Sibbeston,

### *Original Members as nominated by the Committee of Selection*

*Andreychuk, Austin, Beaudoin, \*Boudreau (or Hays), Chalifoux, Christensen, Comeau, DeWare, Gill, Johnson  
\*Lynch-Staunton (or Kinsella), Pearson, Sibbeston, Watt.*

## AGRICULTURE AND FORESTRY

**Chair:** Honourable Senator Gustafson

**Deputy Chair:** Honourable Senator Fairbairn

Honourable Senators:

\*Boudreau, Ferretti Barth,  
(or Hays) Gill,  
Chalifoux, Gustafson,  
Fairbairn, \*Lynch-Staunton,  
Fitzpatrick, (or Kinsella)

Oliver, Sparrow,  
Robichaud, St. Germain,  
(Saint-Louis-de-Kent) Stratton.  
Rossiter,

### *Original Members as nominated by the Committee of Selection*

*\*Boudreau (or Hays), Chalifoux, Fairbairn, Fitzpatrick, Ferretti Barth, Gill, Gustafson, \*Lynch-Staunton (or Kinsella),  
Oliver, Robichaud (Saint-Louis-de-Kent), Sparrow, Spivak, St. Germain, Stratton.*

## THE SUBCOMMITTEE ON FORESTRY (Agriculture and Forestry)

**Chair:** Honourable Senator Fitzpatrick

**Deputy Chair:** Honourable Senator St. Germain

Honourable Senators:

\*Boudreau, Fitzpatrick,  
(or Hays) Gill,  
Fairbairn,

\*Lynch-Staunton, St. Germain,  
(or Kinsella) Stratton.

**BANKING, TRADE AND COMMERCE****Chair: Honourable Senator Kolber**

Honourable Senators:

Angus,	Graham,
*Boudreau (or Hays)	Hervieux-Payette,
Cook,	Kelleher,
Furey,,	Kenny,

**Deputy Chair: Honourable Senator Tkachuk**

Kolber,	Meighen,
Joyal,	Oliver,
*Lynch-Staunton, (or Kinsella)	Tkachuk.

*Original Members as nominated by the Committee of Selection*

Angus, \*Boudreau (or Hays), Fitzpatrick, Furey, Hervieux-Payette, Joyal, Kelleher, Kenny, Kolber,  
\*Lynch-Staunton (or Kinsella), Meighen, Oliver, Tkachuk.

**ENERGY, THE ENVIRONMENT AND NATURAL RESOURCES****Chair: Honourable Senator Spivak**

Honourable Senators:

Adams,	Christensen,
*Boudreau, (or Hays)	Cochrane,
Buchanan,	Eyton,
Chalifoux,	Finnerty,

**Deputy Chair: Honourable Senator Taylor**

Kelleher,	Spivak,
Kenny,	Taylor.
*Lynch-Staunton, (or Kinsella)	
Sibbeston,	

*Original Members as nominated by the Committee of Selection*

Adams, \*Boudreau (or Hays), Buchanan, Chalifoux, Christensen, Cochrane, Eyton, Furey,  
Kenny, \*Lynch-Staunton (or Kinsella), Sibbeston, Spivak, St. Germain, Taylor.

**FISHERIES****Chair: Honourable Senator Comeau**

Honourable Senators:

*Boudreau, (or Hays)	Cook,
Carney	Furey,
Comeau,	Johnson,
	*Lynch-Staunton, (or Kinsella)

**Deputy Chair: Honourable Senator Robichaud**

Mahovlich,	Perry,
Meighen,	Robertson,
Perrault,	Robichaud, (Saint-Louis-de-Kent)
	Watt.

*Original Members as nominated by the Committee of Selection*

\*Boudreau (or Hays), Carney, Comeau, Cook, Doody, Furey, \*Lynch-Staunton (or Kinsella), Mahovlich,  
Meighen, Murray, Perrault, Perry, Robichaud (Saint-Louis-de-Kent), Watt.

## FOREIGN AFFAIRS

<b>Chair:</b>	<b>Honourable Senator Stollery</b>	<b>Deputy Chair:</b>	<b>Honourable Senator Andreychuk</b>
Honourable Senators:			
Andreychuk,	*Boudreau, (or Hays)	De Bané	*Lynch-Staunton, (or Kinsella)
Atkins,	Carney,	Di Nino	Stollery,
Bolduc,	Corbin,	Grafstein,	Taylor.

*Original Members as nominated by the Committee of Selection*

*Andreychuk, Atkins, Bolduc, \*Boudreau (or Hays), Corbin, Carney, De Bané, Di Nino, Grafstein, Lewis, Losier-Cool, \*Lynch-Staunton (or Kinsella), Stewart, Stollery.*

## INTERNAL ECONOMY, BUDGETS AND ADMINISTRATION

<b>Chair:</b>	<b>Honourable Senator Rompkey</b>	<b>Deputy Chair:</b>	<b>Honourable Senator Nolin</b>
Honourable Senators:			
*Boudreau (or Hays)	DeWare,	*Lynch-Staunton, (or Kinsella)	Poulin,
Cohen,	Forrestall,	Maheu,	Robichaud, (Saint-Louis-de-Kent)
Comeau,	Kelly,	Milne,	Rompkey,
De Bané,	Kenny,	Nolin,	Stollery.
	Kroft,		

*Original Members as nominated by the Committee of Selection*

*\*Boudreau (or Hays), Cohen, De Bané, DeWare, Forrestall, Kelly, Kenny, Kroft, \*Lynch-Staunton (or Kinsella), Maheu, Milne, Nolin, Poulin, Robichaud (Saint-Louis-de-Kent), Rompkey, Rossiter, Stollery.*

## LEGAL AND CONSTITUTIONAL AFFAIRS

<b>Chair:</b>	<b>Honourable Senator Milne</b>	<b>Deputy Chair:</b>	<b>Honourable Senator Beaudoin</b>
Honourable Senators:			
Andreychuk,	Cools,	*Lynch-Staunton, (or Kinsella)	Nolin,
Beaudoin,	Fraser,	Milne,	Pearson,
Buchanan,	Ghitter,	Moore,	Poy.
*Boudreau (or Hays),	Joyal,		

*Original Members as nominated by the Committee of Selection*

*Andreychuk, Beaudoin, \*Boudreau (or Hays), Cools, Fraser, Ghitter, Joyal, Kelleher, \*Lynch-Staunton (or Kinsella), Milne, Moore, Nolin, Pearson, Poy.*



**LIBRARY OF PARLIAMENT (Joint)****Joint Chair: Honourable Senator Louis Robichaud**

Honourable Senators:

Atkins,	Grafstein,
Finnerty,	Grimard,

**Deputy Chair:**

Poy,	Robichaud, (L'Acadie-Acadia)
	Ruck.

*Original Members agreed to by Motion of the Senate**Atkins, Finnerty, Grafstein, Poy, Robichaud (L'Acadie-Acadia), Ruck.***NATIONAL FINANCE****Chair: Honourable Senator Murray**

Honourable Senators:

Bolduc,	Doody,
*Boudreau, (or Hays)	Finestone,
Cools,	Finnerty,
	Ferretti Barth,

**Deputy Chair: Honourable Senator Cools**

Kinsella,	Moore,
*Lynch-Staunton, (or Kinsella)	Murray,
Mahovlich,	Stratton.

*Original Members as nominated by the Committee of Selection**Bolduc, \*Boudreau (or Hays), Cools, Finestone, Finnerty, Ferretti Barth, Kinsella,  
\*Lynch-Staunton (or Kinsella), Mahovlich, Moore, Murray, Perry, Stratton.***OFFICIAL LANGUAGES (Joint)****Joint Chair: Honourable Senator Losier-Cool**

Honourable Senators:

Beaudoin,	Fraser,
Finestone,	Gauthier,

**Deputy Chair:**

Hervieux-Payette,	Meighen
Losier-Cool,	Rivest.

*Original Members agreed to by Motion of the Senate**Beaudoin, Fraser, Gauthier, Losier-Cool, Meighen, Pépin, Rivest, Robichaud (L'Acadie-Acadia).*

### PRIVILEGES, STANDING RULES AND ORDERS

<b>Chair:</b>	<b>Honourable Senator Austin</b>	<b>Deputy Chair:</b>	<b>Honourable Senator Grimard</b>
Honourable Senators:			
Austin,	DeWare,	Joyal,	*Lynch-Staunton, (or Kinsella)
Beaudoin,	Di Nino,	Kelly,	Robichaud,
*Boudreau, (or Hays)	Gauthier,	Kroft,	(L'Acadie-Acadia)
Corbin,	Grafstein,	Losier-Cool,	Rossiter.
	Grimard,		

***Original Members as nominated by the Committee of Selection***

*Austin, Bacon, Beaudoin, \*Boudreau (or Hays), DeWare, Gauthier, Ghitter, Grafstein, Grimard, Joyal, Kelly, Kroft, \*Lynch-Staunton (or Kinsella), Maheu, Pépin, Robichaud (L'Acadie-Acadia), Rossiter.*

---

### SCRUTINY OF REGULATIONS (Joint)

<b>Joint Chair:</b>	<b>Honourable Senator Hervieux-Payette</b>	<b>Deputy Chair:</b>	
Honourable Senators:			
Andreychuk,	Finestone,	Grimard,	Moore,
Cochrane,	Furey,	Hervieux-Payette,	Perry.

***Original Members as nominated by the Committee of Selection***

*Cochrane, Finestone, Furey, Grimard, Hervieux-Payette, Moore, Perry, Rivest.*

---

### SELECTION

<b>Chair:</b>	<b>Honourable Senator Mercier</b>	<b>Deputy Chair:</b>	
Honourable Senators:			
Atkins,	DeWare,	Kinsella,	Mercier,
Austin,	Fairbairn,	Kirby,	Murray.
*Boudreau, (or Hays)	Grafstein,	*Lynch-Staunton, (or Kinsella)	

***Original Members agreed to by Motion of the Senate***

*Atkins, Austin, \*Boudreau (or Hays), DeWare, Fairbairn, Grafstein, Kinsella, Kirby, \*Lynch-Staunton or (Kinsella), Mercier, Murray.*

---

# **SOCIAL AFFAIRS, SCIENCE AND TECHNOLOGY**

<b>Chair:</b>	<b>Honourable Senator Kirby</b>	<b>Deputy Chair:</b>	<b>Honourable Senator LeBreton</b>
Honourable Senators:			
Beaudoin,	Carstairs,	Gill,	*Lynch-Staunton, (or Kinsella)
*Boudreau, (or Hays)	Cohen,	Keon,	Pépin,
Callbeck,	Cook,	LeBreton,	Roberston.
	Fairbairn,		

## *Original Members as nominated by the Committee of Selection*

*\*Boudreau (or Hays), Callbeck, Carstairs, Cohen, Cook, Di Nino, Fairbairn, Gill, Kirby, Lavoie-Roux, LeBreton, \*Lynch-Staunton (or Kinsella), Pépin, Robertson.*

# **THE SUBCOMMITTEE TO UPDATE "OF LIFE AND DEATH"** (Social Affairs, Science and Technology)

<b>Chair:</b>	<b>Honourable Senator Carstairs</b>	<b>Deputy Chair:</b>	<b>Honourable Senator Beaudoin</b>
Honourable Senators:			
Beaudoin,	Carstairs,	Kirby,	Pépin.
*Boudreau, (or Hays)	Keon,	*Lynch-Staunton, (or Kinsella)	

# **TRANSPORT AND COMMUNICATIONS**

<b>Chair:</b>	<b>Honourable Senator Bacon</b>	<b>Deputy Chair:</b>	<b>Honourable Senator Forrestall</b>
Honourable Senators:			
Adams,	Callbeck,	Kirby,	Perrault,
Bacon,	Finestone,	LeBreton,	Roberge,
*Boudreau, (or Hays)	Forrestall,	*Lynch-Staunton, (or Kinsella)	Spivak,
	Johnson,		Taylor.

## *Original Members as nominated by the Committee of Selection*

*Adams, Bacon, \*Boudreau (or Hays), Callbeck, Finestone, Forrestall, Johnson, Kirby, LeBreton, \*Lynch-Staunton (or Kinsella), Perrault, Poulin, Roberge, Spivak.*





## CONTENTS

Wednesday, March 1, 2000

	PAGE		PAGE
<b>ROUTINE PROCEEDINGS</b>			
<b>The Estimates, 2000-01</b>		<b>Proposal to Develop Ballistic Missile Defence System with United States—Request for Formal Debate.</b>	
Tabled. Senator Hays .....	739	Senator Roche .....	743
Notice of Motion to Refer Parliament Vote 10 to Joint Committee on Library of Parliament and Privy Council Vote 25 to Joint Committee on Official Languages. Senator Hays .....	739	Senator Boudreau .....	744
<b>Privacy Commissioner</b>		<b>Budget 2000</b>	
Notice of Motion to Extend Term of Appointment.		Allocation for Canada Health and Social Transfer Program.	
Senator Hays .....	739	Senator Roberge .....	744
		Senator Boudreau .....	744
		<b>Delayed Answer to Oral Question</b>	
		Senator Hays .....	745
<b>QUESTION PERIOD</b>			
<b>Agriculture and Agri-Food</b>		<b>Intergovernmental Affairs</b>	
Farm Crisis in Prairie Provinces—Response of Government.		Clarity Bill—Divisibility of Provinces.	
Senator Gustafson .....	739	Question by Senator Murray.	
Senator Boudreau .....	739	Senator Hays (Delayed Answer) .....	745
Farm Crisis in Prairie Provinces—Possibility of Income Averaging and Extension of Farm Credit. Senator Gustafson .....	740	<b>Foreign Affairs</b>	
Senator Boudreau .....	740	Notice of Motion to Authorize Committee to Extend Date of Final Report on Study of Changing Mandate of the North Atlantic Treaty Organization. Senator Stollery .....	745
<b>Budget 2000</b>			
Long-Term Benefits to Taxpayers. Senator Tkachuk .....	740	<b>Business of the Senate</b>	
Senator Boudreau .....	740	Point of Order—Speaker's Ruling. The Hon. the Speaker .....	745
<b>Industry</b>			
Increase in Fuel Prices. Senator Di Nino .....	741	<b>ORDERS OF THE DAY</b>	
Senator Boudreau .....	741	<b>International Search or Seizure Bill (Bill S-4)</b>	
<b>Human Resources Development</b>		Second Reading—Debate Continued. Senator Kinsella .....	747
The Budget—Recording of Employment Insurance and Canada Pension Plan Premiums. Senator Boudreau .....	741	<b>Financing of Post-Secondary Education</b>	
Senator Tkachuk .....	741	Inquiry—Debate Continued. Senator Wilson .....	748
<b>Foreign Affairs</b>		<b>Energy, the Environment and Natural Resources</b>	
Level of Emergency Preparedness for Crisis Situations Around the World. Senator Prud'homme .....	742	Motion to Authorize Committee to Review Canadian Environmental Protection Act—Debate Continued.	
Senator Boudreau .....	742	Senator Taylor .....	750
Mozambique—Effect of Floods on Political Situation.		Senator Lynch-Staunton .....	751
Senator Andreychuk .....	742	<b>Human Rights and Multi-Ethnic Conflicts</b>	
Senator Boudreau .....	742	Inquiry. Senator Beaudoin .....	751
<b>Human Resources Development</b>		Senator Kinsella .....	752
Transitional Jobs Fund—Grants to PLI Environment Ltd.		Senator Austin .....	753
Senator Oliver .....	743	Senator Joyal .....	753
Senator Boudreau .....	743	Senator Hays .....	753
Transitional Jobs Fund—Grants to PLI Environment Ltd.—RCMP Investigation. Senator Oliver .....	743	<b>The Senate</b>	
Senator Boudreau .....	743	Clerk Authorized to Pay Witness Travel Expenses.	
<b>National Defence</b>		Senator Hays .....	754
Proposal to Develop Ballistic Missile Defence System with United States—Request for Information.		<b>Aboriginal Peoples</b>	
Senator Boudreau .....	743	Committee Authorized to Engage Services. Senator Austin .....	754
		<b>Appendix</b> .....	i



*If undelivered, return COVER ONLY to:*  
Public Works and Government Services Canada —  
Publishing  
45 Sacré-Coeur Boulevard,  
Hull, Québec, Canada K1A 0S9





CANADA

# Debates of the Senate

2nd SESSION

• 36th PARLIAMENT

• VOLUME 138

• NUMBER 35

OFFICIAL REPORT  
(HANSARD)

Thursday, March 2, 2000

THE HONOURABLE GILDAS L. MOLGAT  
SPEAKER



## CONTENTS

(Daily index of proceedings appears at back of this issue.)

*Debates*: Chambers Building, Room 943, Tel. 996-0193

---

Published by the Senate

Available from Canada Communication Group — Publishing, Public Works and  
Government Services Canada, Ottawa K1A 0S9.

Also available on the Internet: <http://www.parl.gc.ca>

## THE SENATE

Thursday, March 2, 2000

The Senate met at 2:00 p.m., the Speaker in the Chair.

Prayers.

### SENATORS' STATEMENTS

#### ARCTIC WINTER GAMES 2000

WHITEHORSE, YUKON

**Hon. Ione Christensen:** Honourable senators, I stand today with my little friend and mascot AWGie to inform you of an important event taking place March 5 through to March 11 when the City of Whitehorse, Yukon, hosts the northern circumpolar region's most prestigious multi-sport and cultural event, the Arctic Winter Games.

From a rather modest beginning 30 years ago, the games have evolved and grown to the point where there are now over 1,750 athletes, coaches, officials, artists and performers.

The first games were hosted in Yellowknife, N.W.T., in 1970. They were the result of the joint efforts of Yukon Commissioner James Smith and Northwest Territories Commissioner Stuart Hodgson. While watching their athletes perform in the 1967 Canada Games, the two men decided that something had to be done to address the disadvantages faced by northern athletes. These athletes faced unique challenges not encountered by their more southern counterparts. The lack of facilities and competition and the vast distances and associated travel costs to attend competitions placed them at a disadvantage.

Commissioners Smith and Hodgson approached Alaskan Governor Walter Hickel with the idea and, shortly thereafter, the Arctic Winter Games were born.

The first games were opened in 1970 by the Right Honourable Pierre Elliott Trudeau. More than 500 athletes from the Yukon, Northwest Territories and Alaska came together in Yellowknife for that competition.

When the Arctic Winter Games return to Whitehorse next week, delegations will arrive from Alaska, Russia, Greenland, the Northwest Territories, northern Alberta, Nunavik in Quebec, the Yukon and, for the first time, from the newest territory, Nunavut. They will be participating in a multitude of events.

Many of the sports played at the games are internationally recognized winter sports, but the uniqueness of these games is the historic Arctic and Dene sports that have been practised by the northern circumpolar aboriginal people for many generations.

I refer to games such as the Knuckle Hop, the Airplane, Snow Snake and the One- and Two-Foot High Kick. All are sure to amaze any audience.

Cultural venues are also not to be overlooked. Cultural participants from different parts of the world will join together to express cultural themes through an array of performing and visual arts, crafts fairs and traditional sports.

The Arctic Winter Games International Committee logo consists of three interlocking rings symbolizing athletic competition, cultural exhibition and social interchange, which is the underlying philosophy behind the games.

Honourable senators, I am proud to have had a long association with the Arctic Winter Games. I always volunteered when the games were held in the Yukon. I participated as the mayor of the City of Whitehorse and as the commissioner of the Yukon and once even as the official photographer. Now, I have the honour to work on the hospitality committee as the Yukon senator. I look forward to my visit home next week.

• (1410)

I wish all athletes, artists, officials and organizers the very best for the 2000 Arctic Winter Games where records will fall, friendships will be developed and dreams will be realized.

### CANADA-UNITED STATES RELATIONS

MANITOBA—EFFECT OF DIVERSION  
OF DEVIL'S LAKE, NORTH DAKOTA

**Hon. Janis Johnson:** Honourable senators, I should like to bring your attention to the latest events concerning the proposed Devil's Lake water outlet in Lake Winnipeg.

On December 2, I made a statement in this chamber that was critical of the project. Governor Edward Schafer of North Dakota replied to my statement with a letter that suggested my facts were incorrect. I should like to take this opportunity to set the record straight. First, I will update honourable senators on the facts.

Devil's Lake in North Dakota has been subject to frequent flooding in the last decade. To alleviate this flooding problem, Governor Schafer plans to drain water from Devil's Lake into the Sheyenne River, from whence it would flow into Canada via the Red River and eventually into Lake Winnipeg.



Several serious consequences could result from this project. These two water systems have been separate for almost 2000 years. There is a hazard that foreign biota, predatory fish and harmful micro-organisms could migrate into Lake Winnipeg, causing irreparable damage to our valuable commercial fishery. We have seen this happen before with lampreys and zebra mussels in the Great Lakes. We are not prepared to take this risk with Lake Winnipeg.

Furthermore, North Dakota has declared its intention to eventually link Devil's Lake with the Missouri River, which could introduce a whole new element of danger to the project. As honourable senators know, the Missouri is part of the Gulf of Mexico watershed and the Red River is part of the Arctic watershed. These two rivers have been separate since the last ice age. Linking them could cause serious disruption to both ecosystems. It has happened before, and we must learn from past mistakes.

Before this project can proceed, we are insisting that it be subject to a comprehensive and credible environmental impact study with input from both countries. President Clinton recently passed an executive order which prohibits the use of federal funds for projects that permit the propagation of invasive species. Premier Doer of Manitoba and Foreign Affairs Minister Lloyd Axworthy have likewise expressed their concern about the Devil's Lake project. As senators, we should join forces in calling for an environmental impact study before construction begins.

Recently, I sent a letter to Governor Schafer outlining my opposition to the project. I would be glad to make it available to interested senators, for something like this could affect every province in Canada.

[Translation]

### CANADIAN RADIO-TELEVISION AND TELECOMMUNICATIONS COMMISSION

#### RULING DENYING TVONTARIO REQUEST TO DISTRIBUTE TÉLÉVISION FRANÇAISE DE L'ONTARIO IN QUEBEC

**Hon. Jean-Robert Gauthier:** Honourable senators, according to reports in today's *Le Droit*, Télévision française de l'Ontario will not be part of the Quebec cable television menu. The Canadian Radio-Television and Telecommunications Commission rejected the application by TVOntario, even though 99 per cent of the interveners consulted by the organization were on side with the broadcasting company.

In its report of today, the CRTC acknowledged without reservation the excellence of TFO's programming, but did not deem it appropriate to make it mandatory for Quebec distributors to carry TFO programming for an additional fee to subscribers.

What TVOntario wanted was for TFO to be distributed in Quebec like the speciality programming channels, in that it would be mandatory for it to be carried on a discretionary analog tier, for a fee of approximately 50 cents a month per subscriber.

This is a distressing decision for Canadian francophones, in my opinion, and one that should be reversed. I learned today from a reliable source that this decision may not be appealed. If this is correct, the federal cabinet must ask the CRTC to assume its responsibilities toward Canada's francophone minority.

The CRTC received more than 1,551 interventions in favour of the mandatory distribution of TFO in Quebec, and only 12 in opposition. The application therefore had the support of 99 per cent of interveners. Of course, the Bloc Québécois was opposed, perhaps preferring to see American programming imported, or perhaps fearing competition between TFO and Télé-Québec, the Quebec educational programming provider.

Honourable senators, it is clear that the CRTC has decided to disregard the opinion of the majority of Quebec viewers, who have expressed their support of TFO. The CRTC has chosen instead to support the views of a few interveners from the Quebec television industry who considered TFO's interests to be contrary to their own.

As a result of this decision, TFO remains the only French-language network that is not readily accessible to Quebecers. The CRTC is therefore depriving the Quebec television audience of a rare opportunity to see informative programming on other francophone communities throughout Canada.

It is obvious, in my opinion, that such a decision is going to hamper the expansion of TFO elsewhere in Canada. Honourable senators, Canada as a whole is going to be a heavy loser on the cultural level. This decision must be changed.

[English]

### HOUSE OF COMMONS

#### CHANGES TO RULES—EFFECT ON PARLIAMENTARY DEMOCRACY

**Hon. David Tkachuk:** Honourable senators, last night, the Government of Canada moved to change unilaterally the rules of the House of Commons, which we so politely refer to as "the other place." This assault on democracy is no doubt connected to the attempt by the Bloc Québécois to stall Bill C-20 in the other place, just as the Reform Party did with regard to the Nisga'a legislation, Bill C-9.

Government Notice No. 8, which is on today's House of Commons Notice Paper, in the first paragraph removes the hour allotted for Private Members' Business from Wednesday, which by itself seems relatively meaningless until one sees that it has been moved to Monday. This notice of motion makes it extremely difficult for those members of Parliament who live at the extremities of this country to be in Ottawa to participate fully in debate. As well, it prevents members from debating certain amendments to committee reports, unless they have the permission of the government. The notice states that the government can move its amendments to bills at third reading but other members have no right to have amendments considered at report stage.

Honourable senators, this unilateral brandishing of the power of the majority is arrogant and an assault on parliamentary democracy. Rules governing Parliament are made to protect the opposition parties — that is, to protect the minority. Many of us in this country are members of minorities. We know what it is like when the majority has unabridged power.

Honourable senators, this government notice of motion, if passed in the House of Commons, will convenience the government by making it easier to pass legislation. The government has all the considerable powers of the executive and is supposed to be responsible to Parliament. Members are more and more curtailed from exercising their responsibility. There seems to be no end to the government's arrogance in this matter.

During the Nisga'a debate, the government said that the tactics of the Reform Party held up the work of Parliament for 48 hours. The government just does not get it — that is the work of Parliament! Those 48 hours did not hold up the work of Parliament; the government held up the work of the government. The opposition was doing the work of Parliament. Parliament is a forum.

If opposition parties stall the work of Parliament, they do it for a reason. The public will be their judge, not the media, not the government and not those who inhabit the Langevin Block.

Honourable senators, I am extremely upset, as many of us should be, at what the government is attempting to do. All it wants is the ability to pass rules and regulations with impunity, but there is a little trouble going on in the other place as we speak.

• (1420)

I ask that all honourable senators pay attention to what goes on in the other place over the next number of days, because what happens there can surely happen here. We must be on the lookout for what goes on in the House of Commons before the government destroys the very Parliament that we are here to protect.

## ROUTINE PROCEEDINGS

### THE ESTIMATES, 1999-2000

#### TABLING OF SUPPLEMENTARY ESTIMATES (B)

**Hon. Dan Hays (Deputy Leader of the Government)** tabled, pursuant to rule 28(3), Supplementary Estimates (B) for the fiscal year ending March 31, 2000.

## CRIMINAL CODE

### BILL TO AMEND—REPORT OF COMMITTEE

**Hon. Lorna Milne**, Chair of the Standing Senate Committee on Legal and Constitutional Affairs, presented the following report:

Thursday, March 2, 2000

The Standing Senate Committee on Legal and Constitutional Affairs has the honour to present its

### FOURTH REPORT

Your Committee, to which was referred Bill C-202, An Act to amend the Criminal Code (flight), has, in obedience to the Order of Reference of Tuesday, February 22, 2000, examined the said Bill and now reports the same without amendment.

Your Committee notes that it instructed the Law Clerk and Parliamentary Counsel to correct a printing error in the parchment by replacing, at line 43 on page 2 of the English version of the Bill, the word "court" with the word "count."

Respectfully submitted,

LORNA MILNE  
*Chair*

**The Hon. the Speaker:** Honourable senators, when shall this bill be read the third time?

On motion of Senator Moore, bill placed on the Orders of the Day for third reading at the next sitting of the Senate.

### THE ESTIMATES, 1999-2000 THE ESTIMATES, 2000-2001

NATIONAL FINANCE COMMITTEE AUTHORIZED  
TO STUDY MAIN ESTIMATES, 2000-2001 AND  
SUPPLEMENTARY ESTIMATES (B), 1999-2000

**Hon. Dan Hays (Deputy Leader of the Government)**, with leave of the Senate and notwithstanding rule 58(1)(f) moved:

That the Standing Senate Committee on National Finance be authorized to examine and report upon:

the expenditures set out in the Estimates for the fiscal year ending March 31, 2001, with the exception of Parliament Vote 10 and Privy Council Vote 25; and

the expenditures set out in Supplementary Estimates (B) for the fiscal year ending the March 31, 2000.

Motion agreed to.



## MARINE LIABILITY BILL

[English]

## FIRST READING

**Hon. Dan Hays (Deputy Leader of the Government)** presented Bill S-17, respecting marine liability, and to validate certain by-laws and regulations.

Bill read first time.

**The Hon. the Speaker:** Honourable senators, when shall this bill be read the second time?

On motion of Senator Hays, bill placed on the Orders of the Day for second reading on Tuesday, March 21, 2000.

## CANADA-JAPAN INTER-PARLIAMENTARY GROUP

EIGHTH ANNUAL ASIA-PACIFIC PARLIAMENTARY FORUM,  
CANBERRA, AUSTRALIA—REPORT TABLED

**Hon. Dan Hays (Deputy Leader of the Government):** Honourable senators, I have the honour to table, in both official languages, the report of the delegation of the Canada-Japan Inter-Parliamentary Group respecting its participation at the Eighth Annual Meeting of the Asia-Pacific Parliamentary Forum held in Canberra, Australia, from January 9 to 14, 2000.

[Translation]

## TRANSPORT AND COMMUNICATIONS

NOTICE OF MOTION TO AUTHORIZE COMMITTEE TO STUDY STATE  
OF TRANSPORTATION SAFETY AND SECURITY

**Hon. Lise Bacon:** Honourable senators, I hereby give notice that at the next sitting of the Senate I will move:

That the Standing Senate Committee on Transport and Communications be authorized to examine and make recommendations upon the state of transportation safety and security in Canada and to complete a comparative review of technical issues and legal and regulatory structures with a view to ensuring that transportation safety and security in Canada are of such high quality as to meet the needs of Canada and Canadians in the 21st century;

That the papers and evidence received and taken on the subject and the work accomplished by the Special Senate Committee on Transportation Safety and Security during the First Session of the Thirty-sixth Parliament be referred to the Committee; and

That the Committee submit its final report no later than December 31, 2000.

## QUESTION PERIOD

## NATIONAL DEFENCE

THE BUDGET—ALLOCATION FOR REPLACEMENT  
OF SEA KING HELICOPTERS

**Hon. J. Michael Forrestall:** Honourable senators, I had wanted to ask this question yesterday, but there was insufficient time.

On Tuesday of this week, the Leader of the Government in the Senate told us that the budget would provide a boost of \$2.4 billion over the next four years. However, he neglected to say, although it would have been fairly easy for him to have done so, that \$634 million of that will be spent before the end of this month. That leaves only about \$1.7 billion over the next three years. Is this creative accounting on the part of the Minister of Finance and the government?

Honourable senators, there is no mention in the budget of a Sea King replacement program. If that is the number one priority in capital equipment, as Minister Collenette has said, why is there no reference to it in the budget? If you do the arithmetic, you will find that we have something much closer to \$65 million a year for capital. The rest is going for operations, largely, I would suspect, to cover the shortfall in the deficit of the last year or so. Why is the matter not in the budget?

• (1440)

**Hon. J. Bernard Boudreau (Leader of the Government):** Honourable senators, perhaps I can read more closely from the documents released by the Minister of Finance when he made his budget speech. Since the 1999 budget, \$2.3 billion through 2002-03 has been provided to support the Canadian Armed Forces in their various missions. The Minister of National Defence will allocate these funds to meet the needs of the Armed Forces with the highest priority.

I take some comfort in the fact that the Minister of National Defence has indicated in the past — as I have repeated here a number of times on his behalf — that the minister regards the Sea King helicopters as his top priority. I put the two together, and hopefully it will translate into the kind of action I know the honourable senator seeks.

**Senator Forrestall:** Honourable senators, every day we place in jeopardy the lives of young Canadian men and women when we ask them to get on board that aircraft. If it were not for their absolute faith and trust in the men and women who maintain that particular piece of equipment, I am sure they would not go near it. We are placing them unnecessarily close to jeopardy. There is something morally wrong with that.



I am asking the minister why there is not a specific item in the budget at least to open up the project shop, which is already in place. The computers are there. The desks are there. The tables and chairs are there. If not, they are across the hall in storage. Why do we not at least do that much to show faith to our men and women who fly these planes that are becoming more and more unreliable? Already we have lost a year, if not five years, from last fall. It will be five years from next fall, which makes it six years. The plane should have been on the ground 10 years ago.

**Senator Boudreau:** Let me try to address the second part of the honourable senator's question first.

**Senator Lynch-Staunton:** Don't address it, answer it!

**Senator Boudreau:** Obviously, if the decision was made, as the honourable senator has mentioned, a major expenditure would not occur for some period of time. I am confident that the Minister of National Defence is completely aware of the situation and that he will move with dispatch to address his highest priority.

Again, honourable senators, I must return to the comment that we are sending out our Armed Forces with equipment that threatens their life and health. I take that comment quite seriously, as I did when the honourable senator made it previously, because it presents a serious situation, if that were the case.

**Senator Forrestall:** But it is the case.

**Senator Boudreau:** I had the occasion to visit the IMP facility where this equipment is maintained. I am sure the honourable senator is familiar with it. I raised the honourable senator's questions with the people there and asked them if indeed we were sending our Armed Forces personnel into situations with equipment that put their lives at risk. I was advised that that was not the case. The other issue about the amount of service required to keep them in an appropriate state of repair is another issue altogether. I toured their factory and I actually climbed inside a couple of Sea Kings. I then spoke to the senior officials as well as some senior military personnel and relayed the senator's very comments to them.

**Senator LeBreton:** What did you expect them to say?

**Senator Boudreau:** I shared with them the honourable senator's comments and indicated my concern, and that is the response I received.

**Senator Forrestall:** Honourable senators, I am sure there was the usual disclaimer from DGPA that, while we do our best to ensure all information provided is correct, and the rapid pace of

immediate operations prohibits close scrutiny, DGPA shall not be liable for the accuracy of this transcript, and on it goes. That is a bit of a disclaimer.

I heard the minister say, and so did the nation's press, "We haven't determined how we are going to allocate this money." It is simple, if it is the main priority of the government. I have no doubt that Minister Eggleton is being up front, and I think he is serious. I think he wants it. He knows about the troubles and he knows about the problems. However, I can only conclude that the cabinet has not approved that item yet. Otherwise, it might have been dealt with differently. That is my conclusion. I know of no other reason why it would not have been mentioned as a specific line item in the budget.

Does the minister have any explanation as to why, or is it just that the matter has not been fully thrashed out in cabinet at this time? I am not asking him to tell me what they do and do not do in cabinet.

**Senator Boudreau:** I understand that the honourable senator does not want me to disclose any cabinet discussions.

**Senator Lynch-Staunton:** All you do is read Gallup polls anyway.

**Senator Boudreau:** I do not know the precise rationale for the treatment of many items, but I will say that the Minister of National Defence is on record. I have repeated it here in this place previously. I will continue to address this issue with him. Whenever I do, I will continue to forward the comments of the honourable senator on this particular issue.

## HERITAGE

### NEW WAR MUSEUM—POSSIBLE GOVERNMENT CONTRIBUTION

**Hon. J. Michael Forrestall:** Honourable senators, I have another question on a related subject. Can the government confirm reports in the press today that they will, in fact, make an announcement on a \$50-million contribution for the building of the new Canadian War Museum?

**Hon. J. Bernard Boudreau (Leader of the Government):** Honourable senators, I cannot confirm that press item at this time.

## TRANSPORT

### AIR CANADA—EFFECT OF BILL SETTING OUT OBLIGATIONS

**Hon. Marjory LeBreton:** Honourable senators, the government introduced Bill C-26 in the other place on February 17, legislation which was heralded by Transport Minister Collenette as destined to create and sustain a revitalized Canadian airline industry, although he ignored the calls of the Competition Bureau for increased competition as the best way to protect Canadian consumers against excessive fares.

The apparent intent of Bill C-26 is to provide consumers with certain protections against fare increases and reduction in services. One aspect of this bill is shocking and should be of concern to all Canadians: Bill C-26 seeks to criminalize, in an unprecedented way, the day-to-day commercial business activities of the officers and directors of Air Canada by providing for huge fines and jail terms of up to five years for what amounts to minor civil offences or breaches of promises to the minister. At the same time the bill appears to give total immunity to the government, its ministers and officials. What kind of double standard is that? Should we be surprised? This is so typical: no ministerial accountability. Blame whoever is handy.

• (1440)

Honourable senators, I agree with statements expressed in a letter to the editor of *The Globe and Mail* last week. If this government is to fine and jail the management and directors of Air Canada for alleged broken promises, it should extend the same penalties to itself.

I ask the Leader of the Government in the Senate: Why is the government proposing such an unprecedented law, and why is he and his government afraid of setting for itself the same standards to which the management of Air Canada will be subjected?

**Hon. J. Bernard Boudreau (Leader of the Government):** Honourable senators, I do not know whether the honourable senator is advocating that those penalties be removed from the legislation, but we may find that out when it comes before the Senate, and we will all have an opportunity to debate that issue. It may be that the honourable senator will want all penalties removed. In fact, it may be that there should be no penalties or some lesser penalty, should Air Canada fail to live up to its agreement. There was a fundamental commitment by Air Canada, not simply to a minister but to the people of the country, with respect to its obligations.

**Senator Tkachuk:** Like getting rid of the GST!

**Senator Boudreau:** We will have an opportunity to exchange our views on the bill when it comes before us. These were obligations freely entered into by the Air Canada officials. I assume they intend to live up to them, and therefore, the penalties should not be a matter of concern to them.

**Senator Nolin:** By a Liberal!

**Senator LeBreton:** Honourable senators, the minister makes some wonderful assumptions, and perhaps the answer actually lies in his assumptions. Perhaps it lies in the fact that half of the minister's cabinet colleagues should have been fined or jailed for renegeing on promises to scrap the GST and free trade.

What kind of country have we become when such Draconian laws are imposed against people in the private sector?

**Senator Boudreau:** Honourable senators, this situation is quite unusual. Air Canada will be the dominant carrier in an

industry which is obviously fundamental to a country as large as Canada.

I feel that it is appropriate that we extract clear and binding commitments from the Air Canada officials. Some people may be of the view that the proposed penalty provisions are too severe. I will be interested to hear comments and debate from honourable senators on that issue. Personally, I think that when Air Canada made the commitments they understood how seriously the Government of Canada and Canadians take those commitments. I can only assume that they intend to keep the commitments. The penalty, as I have said, should not be a problem for them.

#### NATIONAL HIGHWAY POLICY—GOVERNMENT POSITION

**Hon. Noël A. Kinsella (Deputy Leader of the Opposition):** Honourable senators, as I rise to pose my question, I have in my mind the image of Sir John A. Macdonald driving the last spike in a railway system that tied this great country together. With respect to our national highways, transportation experts in Canada have observed that 40 per cent of our national highways are in a serious state of disrepair. This government has dedicated \$150 million this year for highways across Canada.

My question to the Leader of the Government in the Senate is: Does the government have any intention of developing a national highway policy?

**Senator Lynch-Staunton:** Good point! Yes or no?

**Hon. J. Bernard Boudreau (Leader of the Government):** Honourable senators, the development of a national highway program is obviously a federal-provincial initiative. The commitment of \$150 million by the federal government is simply one element in the ongoing process of creating such a strategy.

**Senator Nolin:** What about health?

**Senator Boudreau:** I would hope that as the performance of the economy improves, and as Minister Martin says, there will continue to be a review of all the measures in the budget. I am optimistic that this beginning can be strengthened and enlarged upon as we move forward and accomplish a national highway program.

#### THE BUDGET—TOLL FUNDING FOR HIGHWAY INFRASTRUCTURE

**Hon. Noël A. Kinsella (Deputy Leader of the Opposition):** My supplementary question, honourable senators, relates to the matter of so-called public/private partnerships with respect to meeting the needs of our national highway system

In the key point section of the internal budget briefing notes on the topic of strengthening municipal and provincial infrastructure, which can be downloaded from the Department of Finance's Web site, the government stated that public/private partnerships will be encouraged to assist governments in meeting public infrastructure needs.



My question for Leader of the Government in the Senate is: Based on this statement, are we to expect more toll roads similar to the experience in New Brunswick, where toll roads have thankfully been removed through the leadership of Premier Lord, or in Nova Scotia, where toll roads have been maintained? The lack of a national highway policy has resulted in forcing the leader's province to inappropriately and inconsistently fund highways through this model. The Leader of the Government in the Senate, I believe, was Minister of Finance for Nova Scotia at the time.

**Senator Lynch-Staunton:** Those are the good old days.

**Hon. J. Bernard Boudreau (Leader of the Government):** Honourable senators, the decisions as to which highways are built, in which order, and whether or not there will be a toll highway developed are decisions which are made from time to time by provincial governments. Similar decisions were made by the Government of Nova Scotia and New Brunswick. In Nova Scotia, the decision to proceed with a toll highway was made by one political party, and then the decision to retain and continue that toll highway was made by a political party of another stripe.

**Senator Kinsella:** What is the point?

**Senator Boudreau:** I believe both political parties in that particular province were able to see the value in toll highways. I recall that the Minister of Transport for Nova Scotia, when asked if he would remove the toll highway following the example of his friend in New Brunswick, indicated there was not a chance and that the government could find a use for the \$100 million or so that they would reap from that particular venture. I suppose New Brunswick did not need the money.

**Hon. John Buchanan:** Honourable senators, is it not true that there is a basic difference between the two toll highways? In New Brunswick there was only a small section of the private road that was completed and only one set of toll booths. The rest of the highway was under construction. In Nova Scotia, under a Liberal government, the whole of the toll road was completed before the government changed. In fact, the construction was started back in 1993-94 and completed in approximately 1995. The Conservative government did not come into office until 1999. There is a basic difference between the two. The highway in Nova Scotia was fully completed and in full operation.

**Senator Boudreau:** Honourable senators, I do not know if that would constitute a basic difference in principle on whether or not one supported that approach. Certainly the Government of Nova Scotia believes that it needs the revenue from that toll highway. They made the choice to retain that revenue. They could have decided that they would remove the toll booths and that it would no longer be a toll highway. It does not take any time at all to do that. In fact, it would leave the province without the substantial revenue that that toll highway provides. That is a choice that the current government of the Province of Nova Scotia made. New Brunswick made a different choice.

I can only assume that they have enough money to construct whatever new highways they need in New Brunswick.

• (1450)

## UNITED NATIONS

### GOVERNMENT COMMITMENTS TO ALLEVIATE POVERTY TO HUMAN RIGHTS COMMITTEE

**Hon. Lois M. Wilson:** Honourable senators, I have some questions for the Leader of the Government.

Canada has been condemned by all of the major international UN human rights treaty bodies for failing to take adequate measures to address systemic poverty in this country. Therefore, the Canadian government made a strong commitment to address these inequalities in Canadian society in its statement to the UN Human Rights Committee examining Canada's performance on civil and political rights in April of 1999. I have three related questions.

First, why have our international commitments on this issue not been honoured? Second, why has Heritage Canada not released the concluding observations the UN Human Rights Committee made about this in April of 1999, almost one year ago, when we had promised the UN that we would circulate that report to all parliamentarians? Third, why was this issue not addressed when the budget was presented?

**Hon. J. Bernard Boudreau (Leader of the Government):** Honourable senators, on the first two questions, which are very specific and pointed, I will undertake to consult with the Minister of Foreign Affairs and ask for a response which I can then provide to the honourable senator.

With respect to the third question, the issue of children and families was addressed in large measure in this budget in terms of tax reductions. The tax cuts are substantial — \$58 billion-worth. They are largely directed towards low- and middle-income families, and the result is that thousands upon thousands of Canadians in the lower-income bracket will no longer pay any income tax. That is positive step.

I am sure the honourable senator is also aware of the additional funding in the Child Tax Credit program. It is, therefore, perhaps an overstatement to say that this issue was not addressed. A good part of the direction of the budget was to provide tax relief and to leave money in the pockets of parents of children in the lower- and middle-income brackets.

**Senator Wilson:** With all due respect, honourable senators, the UN committee singled out the situation of single mothers, which the government has only partially addressed. The leader has said he will consult with the Minister of Foreign Affairs. However, it is Heritage Canada and it falls within their ambit. Perhaps the consultation should take place there.

**Senator Boudreau:** I thank the honourable senator for that information. I will certainly direct the question to that minister.



## FOREIGN AFFAIRS

## CUBA—EFFICACY OF QUIET DIPLOMACY

**Hon. A. Raynell Andreychuk:** Honourable senators, the Government of Canada switched its policy on Cuba several years ago and indicated that the previous stance of taking action at the Human Rights Commission and in other fora with respect to Cuba's human rights record would be replaced by quiet dialogue. The government has consistently stated that this is paying off. However, we have seen just as consistently that it has not paid off. For example, despite the government's appeals that political opponents not be jailed, jail terms were imposed. We saw recently the violation of a Cuban official's transit visa, with the obvious complicity of the Cuban embassy here.

Will the government leader indicate where this quiet diplomacy has paid off? Can he give honourable senators any examples? Certainly, there is a litany of violations of that quiet diplomacy. That type of diplomacy should involve a trust between two countries, but it has been a one-way street thus far.

In addition, will the government now review its policy on Cuba, since quiet diplomacy has obviously failed?

**Hon. J. Bernard Boudreau (Leader of the Government):** Honourable senators, with respect to the most recent incident involving the Cuban embassy here in Ottawa, the Minister of Foreign Affairs has made Canada's position clear and has delivered it in an unequivocal fashion.

On the general question of a review of our foreign policy and its accomplishments and shortcomings with respect to Cuba, I might ask the minister to provide me with a review of the situation since the statement referred to by the honourable senator was made. Upon receipt of such a review, I would then share it with the honourable senator.

I have the impression that there has been value to the growing level of contact between the two countries. I am of the view that as the level of contact increases, it is of value in developing and maturing the human rights situation in Cuba. Matters can only be helped by contact.

**Senator Andreychuk:** Honourable senators, the majority of contacts between Canada and Cuba are related to trade and investment, and they may have some long-term benefit to Cuba. However, that is not Canadian government policy; it is a matter of business and the private sector.

The Canadian government specifically said that it would not support resolutions on Cuba in human rights fora because, through quiet diplomacy, we could have an impact on the Cuban government and its activities and repression within its own country. Many quarters in Canada have certain information and have given it to the government, pointing out that quiet

diplomacy simply has not worked. Repression — the violation of human rights — continues in Cuba.

Is the Canadian government not moving because it is worried about trade? Does that not show, therefore, that trade is of paramountcy and not human rights?

Will the government re-examine this matter as a government-to-government issue, not just in terms of trade, but business partner to business partner?

**Senator Boudreau:** Honourable senators, Senator Andreychuk mentions that the bulk of our contact and relationship is trade and business related. I am not sure that is correct. Canada has become the largest point of origin for tourism in Cuba. I am told that more Canadians travel to Cuba than from any other country.

**Senator Prud'homme:** That is absolutely right.

**Senator LeBreton:** We cannot go to Florida.

**Senator Boudreau:** I am told that more Canadians visit Cuba than people from any other country.

**Senator Lynch-Staunton:** What is the point?

**Senator Boudreau:** Canada has become Cuba's number one source of tourism. I suspect that this tourist presence represents the largest part of our contact with Cuba, and it is on a citizen-to-citizen basis.

On a government-to-government basis, I am not sure what the honourable senator would advocate in place of the present policy. Since the Cuban Revolution, the American government has taken a different tack. It is fair to say that their attempts were meant to isolate Cuba in the hope of improving the human rights situation there. I am not so sure that was a great success. I personally believe that it was not.

If the honourable senator is urging the Canadian government to adopt a policy such as the one the American government adopted in the 1960s, the 1970s and the 1980s — although they are getting away from that now to some extent — I do not know if that would be an appropriate approach.

**Senator Andreychuk:** Honourable senators, Canada has never had a policy of isolating Cuba, and I am not advocating such a policy; nor am I advocating that Canada take the American approach. Quite the contrary. I personally spent time at the Human Rights Commission attempting to dissuade and to change the American position on Cuba.

• (1500)

Honourable senators, we have always said that our standards on human rights will be applied as consistently as possible around the world.

The government has said, "We will not put Cuba through the same hoops through which we have put others." We have stopped our actions in the Human Rights Commission and have said that quiet diplomacy will work. Minister Axworthy proceeded to apply quiet diplomacy. What happened? Castro came out and said, "That is not my understanding. I did not agree to make any changes in my country." Yet, Amnesty International and others were pointing out that political opponents were being inappropriately jailed and not receiving fair trials and treatment. As a result, Canada appealed to Castro. He jailed them anyway.

We have seen how they work in this whole visa episode. It may be that an individual person was involved in certain actions in the United States, yet the entire Cuban embassy staff here is shielding that person. I do not think that those actions are responsive to Canada's quiet diplomacy and dialogue with Cuba.

I am asking the government that it revert to what was done before, namely, to apply to Cuba the same standard that we ask of each and every country that has signed the covenants on Human Rights.

**Senator Boudreau:** I certainly applaud the senator for clarifying her position and indicating that she does not advocate a policy of isolation.

**Senator Lynch-Staunton:** What is the government's position?

**Senator Boudreau:** I will pass along the comments of the honourable senator. I will bring forward a response, as I said, with regard to the review of the policy.

I do not share entirely her characterization of the success of the Canadian policy. I do not think she would suggest that any policy will achieve all of the results that we may wish. However, there has been improvement, and I think that improvement will only continue by contact.

In any event, I take the honourable senator's comment seriously. I will attempt to respond in a more thorough way on our return to this chamber.

#### DELAYED ANSWER TO ORAL QUESTION

**Hon. Dan Hays (Deputy Leader of the Government):** Honourable senators, I have a response to a question raised in the Senate on February 23, 2000 by Senator Spivak regarding a motion to establish an Office of Children's Environmental Health.

#### THE SENATE

##### MOTION TO ESTABLISH OFFICE OF CHILDREN'S ENVIRONMENTAL HEALTH—RESPONSE OF GOVERNMENT

*(Response to question raised by Hon. Mira Spivak on February 23, 2000)*

The government of Canada, in partnership with the Provincial and Territorial governments, has undertaken the National Children's Agenda which is a major initiative to address the needs of children. The government is committed to working to support parents and ensure that children develop the abilities they need to succeed. Included in this are considerations related to ensuring safe communities for children and in particular a safe physical environment.

Through the Environmental Health Program of Health Canada, health risks from environmental hazards are continually assessed and managed using a range of tools including, for example, legislation like the Canadian Environmental Protection Act and the Hazardous Products Act.

Health Canada and Environment Canada are the lead federal departments responsible for the protection of the health of Canadians vis à vis the physical environment. They are in the process of developing an Environmental Health Strategy. This initiative will harmonize and coordinate management of health risks in the physical environment across the federal departments.

This environmental health strategy considers children as a vulnerable sub-group and gives them particular attention. A detailed analysis is currently underway to consider children's environmental health issues. This will be the subject of an interdepartmental workshop scheduled for May 2000. From this workshop a concrete action plan will be developed for the federal government. The establishment of an Office of Children's Environmental Health will be considered as part of this action plan, but no decision has yet been taken on whether to create such an office.

## ORDERS OF THE DAY

### CANADA ELECTIONS BILL

#### SECOND READING—DEBATE ADJOURNED

**Hon. Dan Hays (Deputy Leader of the Government)** moved the second reading of Bill C-2, respecting the election of members to the House of Commons, repealing other Acts relating to elections and making consequential amendments to other Acts.

He said: Honourable senators, Bill C-2 is an instrument of law which, if passed, will enable the government, in the name of all Canadians involved in the electoral process, to have a legislative framework that represents significant improvements to our federal electoral system. It will be a more fair, moderate and user-friendly system. This legislation builds on our existing Elections Act while maintaining its core principles.



Bill C-2 is the result of much important work undertaken by parliamentarians in both Houses. It is based as well on recommendations from the 1991 Lortie commission and the June 1998 Procedure and House Affairs Committee report of the other place. The commission adopted six objectives to develop recommendations for electoral reform with the goal of enhancing the legitimacy of Canadian institutions of governance. Their recommendations ensure that the electoral process truly reflects the Canadian ideals of a free and democratic society. I remind honourable senators that Senator Lucie Pépin was a member and a key participant in that process. Since the Lortie commission, the Procedure and House Affairs Committee of the other place has continued to work on electoral change through consultation with Canadians, including academics, the Chief Electoral Officer and officials from other countries.

The electoral system, having been the subject of much study during recent years, has also gone through much legislative change.

[Translation]

In the past 10 years, significant changes have been made to the voting mechanism by three different bills. The 1992 changes to the Canada Elections Act concerned, among other things, level access to polling stations. The lawmakers also required the Chief Electoral Officer to implement information and public awareness programs. The 1993 changes gave the right to vote to judges, persons with disabilities and inmates serving a sentence of less than two years. Moreover, they extended the application of special electoral rules to Canadians living abroad for less than five years, to inmates serving a sentence of less than two years and to voters in Canada unable to vote at advance polls on the actual voting day in their riding.

The 1993 changes provided as well for the automatic deletion of any party not presenting candidates in at least 50 ridings in an election and prohibited political contributions from outside the country.

In 1997, the government introduced a bill authorizing the establishment of a permanent voters' list and reducing the minimum electoral period to 36 days. Bill C-2 seeks to review the Canada Elections Act, while preserving our electoral standards. It proposes administrative changes, promotes the principles of equity, makes the act more flexible and reviews provisions that were invalidated by the courts.

The bill also codifies existing uses, so that voters can be sure of their rights and responsibilities during federal elections, including the right to campaign in multiple unit residential buildings.

[English]

Honourable senators, all voters, election officers, political parties and individual candidates will benefit from the provisions

of this legislation. They will benefit by operating in a more modern and effective electoral system.

[Translation]

I will first describe the administrative changes proposed in the bill and then I will give you my personal views on third-party spending and blackout periods.

[English]

Concerning administrative changes, this bill adjusts voting hours to recognize the Province of Saskatchewan's practice of not changing to daylight saving time. This change ensures that the polls will close in Saskatchewan before provinces west of them.

Provisions are also included to standardize polling times in by-elections. Currently, returning officers are not allowed to vote, except to break a tie. The bill changes this to allow returning officers to vote to ensure that the 301 Canadians who serve in these positions may exercise their right to vote as envisaged by section 3 of the Charter of Rights and Freedoms. Tie votes will be dealt with by calling a by-election.

Canadians who live in multiple-unit residential buildings will be assured of their right to reasonable and appropriate political expression through clause 322(1), enabling them to post election signs. Currently, some leases or condominium declarations prohibit the display of election signs, which deprives resident voters of their right to political expression. These amendments would ensure that voters have certain rights to post election signs during elections, providing size and placement rules are followed. Similarly, candidates will be assured of the ability to canvass all potential voters under a clause dealing with reasonable and appropriate access to these buildings. The right of candidates to access multiple-unit residential buildings for canvassing is fundamental in a campaign, but it has not always been respected, even though that right already exists. This amendment would make it an offence to refuse access to public areas in multiple-unit residential buildings or to refuse candidates the right to canvass door-to-door in apartment buildings.

• (1510)

[Translation]

When signs must be removed, public authorities will now be required to give reasonable notice to the candidate's official agent, before removing such signs.

[English]

All in all, Canadians have demonstrated great respect for the laws of this country, not only the letter of the law but also its spirit. However, to better deal with transgressions of the act that occur during election campaigns, the Commissioner of Elections will be able to enter into compliance agreements and seek injunctions with respect to offenders.



Clause 517 of the bill would enable the commissioner, in a timely way, to enter into an agreement with a contracting party who has committed, is about to commit, or is likely to commit an act that could constitute an offence under Bill C-2 and may not otherwise be resolved during the election period. Compliance agreements, which may be made public, would provide the Commissioner of Elections with an alternative to prosecution.

Bill C-2 lowers the threshold under which the Commissioner of Elections would seek an injunction to compel a person to comply with the act. The threshold that the commissioner currently seeks injunctions under is in incidents of irreparable harm. The new threshold would permit the commissioner to seek an injunction on the basis of reasonable grounds. Previously, injunctions were practically impossible to obtain in a timely manner during the writ period. This change is in keeping with the principle of electoral fairness.

The Canada Elections Act is also being amended to include all the offences in the same act. This eliminates the need to refer to the Criminal Code with respect to those violations for which there are, at present, no specific provisions in the act. This new regime provides more clarity and will help electoral participants, election officers and voters to find out easily if an act or failure to act would be sanctioned.

To offset the impacts of inflation, Bill C-2 is proposing a number of changes to election financing. It would allow candidates to receive full reimbursement of their \$1,000 nomination deposit on submission of their campaign reports. The definition of "eligible personal campaign expenses" will be expanded to include childcare expenses as well as expenses relating to the provision of care for a person with a physical or mental disability for whom a candidate normally provides such care.

Bill C-2 would increase the threshold from \$100 to \$200 with respect to donations eligible for the 75 per cent tax credit. This is designed to update the level set in 1974. The limit for expenses without receipts is doubled to \$50. Candidate spending limits will continue to be adjusted using the revised list of electors.

The Government of Canada has decided once again to address the spending by third parties during elections. Third parties are defined as any person or group of persons spending money on election ads during the campaign period. Election ads would mean advertising to promote or oppose a registered political party or the election of a candidate, including taking a position on an issue with which the registered party or candidate is associated. A survey sponsored in 1997 by the Social Sciences and Humanities Research Council reported that an overwhelming 82 per cent majority of Canadians support limiting third-party spending during elections.

Bill C-2 imposes a spending limit on third parties at the national level of \$150,000, of which no more than \$3,000 could be spent on election ads promoting or opposing candidates in an electoral district. That includes ads which identify a candidate. A third party spending more than \$500 would be required to register and file a financial report with the Chief Electoral Officer.

The courts have studied many aspects of the Canada Elections Act in the context of various constitutional challenges. For example, the Alberta Court of Appeal declared unconstitutional in *Somerville v. Canada* the \$1,000 limit on third party advertising in the current Canada Elections Act. However, in 1997, the Supreme Court of Canada disapproved of the *Somerville* decision and clearly endorsed the principle of third party spending in the *Libman* case. Although this decision was made in the context of the Quebec Referendum Act, the Supreme Court specifically addressed the *Somerville* case. In so doing, the court provided good guidance for a new legislative framework for controlling third party spending in the federal electoral context.

The Supreme Court of Canada said in *Libman*:

While we recognize their right to participate in the electoral process, independent individuals and groups cannot be subject to the same financial rules as candidates or political parties and be allowed the same spending limits.

Although what they have to say is important, it is the candidates and political parties that are running for election. Limits on independent spending must therefore be lower than those imposed on candidates or on political parties.

[Translation]

Just as the principle of equity takes precedence over the rights of candidates and parties to spend endlessly during an election campaign to make their position known, this principle must also take precedence over the right of third parties to state their position.

[English]

On the issue of blackout, currently the only provision in force respecting a blackout period is the restriction prohibiting political parties from advertising between the issue of the writ and 29 days before polling day, as well as on polling day itself and the day immediately preceding polling day. This bill extends that ban to third parties. Its application will include all electoral participants. Essentially, these provisions will level the playing field for electoral participants. The blackout will effectively prohibit the broadcast or publication of exit polls.

Similarly, this bill bans the publication of new election surveys during the last 24 hours of the election campaign. In addition, for the first time, agents releasing polls will be required to publish, within a 24-hour window, the basic methodological information about the poll. This information represents the minimum requirements advocated by experts in this field. The requirements include publishing sponsorship of the poll, the date it was conducted, the date the interviews took place, and the population from which the respondents were drawn, along with technical information such as the sampling method, the response rate, the non-response rate, and the margin of error. Disclosure of this information ensures that a poll's credibility and reliability can be assessed by the public, thereby contributing to informed debate about poll results.

Honourable senators, Bill C-2 is a required revision of the current Canada Elections Act. As I have indicated, it clarifies, restructures and adds some new provisions to address the needs of Canadians in the 21st century. It is a comprehensive revamp of the current act while maintaining the ideals of the previous Elections Act.

[Translation]

Canadian voters will be the first ones to benefit from these new provisions, which will ensure that the electoral system continues to serve them well for a long time.

[English]

I believe that the experts in the field and the political party representatives also share this view. Bill C-2 is based on our traditions and principles of transparency, fairness and accountability. Bill C-2 was developed within the framework of a non-partisan process. If Bill C-2 is passed into law, it will help to shape a more open, efficient, and equitable electoral system.

[Translation]

• (1520)

**Hon. Pierre Claude Nolin:** Honourable senators, as a Canadian, I have worked with the Canada Elections Act on more than one occasion during campaigns — and I am certainly not the only one to have done so. We can be proud of our electoral system. However, it must be improved when necessary.

The Chief Electoral Officer has raised two matters which the bill does not cover, one of them being the appointment of returning officers. Our electoral system is credible and is recognized around the world as one of the best, but it has its shortcomings.

I am not saying that returning officers act in bad faith — on the contrary — but the public's perception of their integrity can

be coloured by the manner of their appointment. Why has the government not approved the Chief Electoral Officer's recommendation that returning officers for Canada's 301 ridings be chosen through a selection process entirely under the responsibility of the Chief Electoral Officer, rather than appointed by the Governor in Council?

[English]

**Senator Hays:** The best answer I can give is that our experience with the system as currently reflected within Bill C-2 has, in the opinion of the government, worked well, and the government has every expectation that it will continue to serve Canadians well.

**Senator Nolin:** I accept that. I am not at all suggesting that the returning officers are not doing their job properly. I am talking about the perception of openness and fairness and ensuring that it is a most transparent system. I am sure we will have time to question the Chief Electoral Officer in committee on why he made that suggestion and his reaction to the proposed legislation.

My other area of questioning is financing. For more than 30 years, we have been controlling, through the Electoral Act, the finances of the federal political parties. Once again, the Chief Electoral Officer, in his report of 1996, highlighted a big black hole in the system. While we are rightfully coordinating, examining, supervising and imposing upon national organizations a tremendous and huge system of financial control of political parties, we are not, and this bill does not help, controlling the finances of local political organizations. Why?

**Senator Hays:** Honourable senators, I believe the Elections Act has limited its reach to election periods. I am giving the honourable senator the answers that I have gleaned from briefings. I was not briefed on the precise question that he has raised. However, that would be my assumption.

I have forgotten whether or not there were recommendations from the Lortie commission on this subject. I know what the honourable senator is talking about, and I think there is merit in pursuing that issue, but I do not believe he will find it in this bill because it constitutes a more ambitious legislative initiative than the government wanted to bite off on this occasion. I would say that it is not a forgotten matter. The honourable senator called it a black hole. It certainly is an overlooked area where we have potential concern. I am sure it is something that can be discussed within the context of Bill C-2.

Returning to the first question, as the honourable senator did in asking his second question, I think the process now is understood by most people. It is very transparent. The final approval for returning officers involves the incumbent or sitting member — he or she may not choose to run again — when returning officers are changed or their terms come up for review. It is quite transparent. Substituting another group of political actors — something we have been talking about lately — for the ones that are consulted and involved now in those appointments is not necessarily progress.

[ Senator Hays ]



**Senator Nolin:** When I use the words “black hole”, I should have used the words used by the Chief Electoral Officer in his report, “a gray area.”

**Senator Cools:** Now we have it in black and white!

**Hon. Marcel Prud’homme:** Honourable senators, I do not know if there has been agreement that we pass this bill right away. That is fine. I know now that we will recess and have a chance to look at it.

Honourable senators may be surprised that I have not mentioned again the status of the independent member. That is not because I am giving up. I see I am going nowhere, and I am losing my energy, and almost everything else, in trying to convince the Chamber, even though some have made a good attempt to accommodate us, including Senator Carstairs and others. However, from time to time there are days like this when I regret that we have not come to terms with the independent members of this Senate who can offer, in committees, their expertise. It is days like this that I regret that independents cannot sit on committees. Of course we can attend, and of course we are equal and so on, but it is never the same.

I have been involved with the Elections Act since the first day of my arrival in Parliament in 1964 and even before. You may remember that when we amended the act the last time I was the first one to stand. I was happy to open the way for the official opposition — I am not part of that either — to take over. We defeated the bill and saved Canadian taxpayers \$6 million. The members of the other chamber were not too happy. They were promised by someone prominent, “Don’t worry, boys. Don’t be nervous. We will scrap the bill.” However, we did not scrap the bill. We defeated the bill. Now everyone is happy because it is a good bill. I am one of those, like Senator Nolin, who believes that. We are almost more virtuous when we are in opposition than when we are in government.

**Senator Nolin:** No, no, when we are in the Senate.

**Senator Prud’homme:** That is why people who did not make an effort when they had a change in returning officer thought it was good. Maybe we should take the appointment process away from the government. We will discuss that in committee.

• (1530)

I predicted in the old days what was to happen, and it is coming fast. Any elector whose name is not on the list of electors may register in person on polling day.

Years ago, Senator Nolin and I foresaw this danger. We had the guts to be friends. We went before the commissioners. We always won when we made appeals in front of the judges, even though we were on opposite sides. We got what we wanted because no one else disagreed.

I see many precedents taking place. Fewer and fewer people will register. Is that not true, Senator Nolin? Many people do not

like to register, even though it is now automatic. They say they can register the day of the election. We will have to look into that, even though we changed the system of enumeration. That was an amelioration, but we will have to push it further along. With the new system, the enumeration list may contain names that should not be there, and we will have to look into that.

Honourable senators, I am prepared to travel to every university in Canada to convince young people not to Americanize our political system. Ours is a good political system.

Is the honourable senator satisfied with the bill? If not, we will come back to this issue in committee. Perhaps Senator Nolin, a few other senators and myself can put our heads together to see how we can avoid, at all cost, Americanizing our electoral system, where money counts above ideas and people who put themselves forward as candidates.

**Senator Hays:** Honourable senators, as the sponsor of this bill, it is easy for me to say that the bill does not take us towards the American system.

In his question, Senator Prud’homme referred to the role that campaign funds play in the American system. We have circumscribed much more carefully the amount of money that can be spent to influence voters. This government and those before us have tried in this and previous legislation to ensure that the system is as fair as possible.

There are certain common elements to any true democracy, such as exists in Canada or the United States, and one will find those elements in this legislation. We are remarkably different from the United States, and this bill will not change that.

On motion of Senator Lynch Staunton, for Senator Oliver, debate adjourned.

## THE ESTIMATES, 2000-01

MOTION TO REFER PARLIAMENT VOTE 10 TO JOINT COMMITTEE ON LIBRARY OF PARLIAMENT AND PRIVY COUNCIL VOTE 25 TO JOINT COMMITTEE ON OFFICIAL LANGUAGES ADOPTED

**Hon. Dan Hays (Deputy Leader of the Government),** pursuant to notice of March 1, 2000, moved:

That the Standing Joint Committee on the Library of Parliament be authorized to examine the expenditures set out in Parliament Vote 10, and that the Standing Joint Committee on Official Languages be authorized to examine the expenditures set out in Privy Council Vote 25 of the Estimates for the fiscal year ending March 31, 2001; and

That a Message be sent to the House of Commons to acquaint that House accordingly.

Motion agreed to.



## PRIVACY COMMISSIONER

### MOTION TO EXTEND TERM OF APPOINTMENT ADOPTED

**Hon. Dan Hays (Deputy Leader of the Government),** pursuant to notice of March 1, 2000, moved:

That, in accordance with subsection 53(3) of the Act to extend the present laws of Canada that protect the privacy of individuals and that provide individuals with a right of access to personal information about themselves, Chapter P-21 of the Revised Statutes of Canada 1985, the Senate approve the reappointment of Bruce Phillips as Privacy Commissioner for a term of four months, effective May 1, 2000.

**The Hon. the Speaker *pro tempore*:** Is it your pleasure, honourable senators, to adopt the motion?

**Hon. John Lynch-Staunton (Leader of the Opposition):** Honourable senators, this motion relates to the appointment of a very important official, the Privacy Commissioner. It was very worthwhile when, last year, the commissioner appeared before us in Committee of the Whole. It would be valuable for him to come to us again.

I am very happy that the government is supporting his reappointment, but the Privacy Commissioner has an important role and he reports to Parliament. He should have an opportunity to explain both his successes and his frustrations to it. I know the latter are quite numerous.

I suggest to the government that we ask Mr. Phillips to appear before us and agree to his renomination while he is with us.

**Senator Hays:** Honourable senators, I support that suggestion. I will try to accommodate Senator Lynch-Staunton in having Mr. Phillips, our Privacy Commissioner, appear before us. In terms of standing this matter, I am not sure when his appointment runs out.

**Senator Lynch-Staunton:** The motion gives the date of May 1.

**Senator Hays:** The motion is effective May 1 for a further period of months. I assume his appointment does not run out until the end of April. I have some concern that if I do not do pass this motion, we might not have a Privacy Commissioner. However, I have no problem in pursuing what has been requested.

I believe all honourable senators would need to agree to call the Privacy Commissioner before us, as we would require a motion of the Senate to proceed into Committee of the Whole.

I cannot speak for all senators any more than can Senator Lynch-Staunton. However, I will undertake to see that this matter

comes to the floor of the Senate at an early time. I shall discuss the matter with my counterpart. In the meantime, I desire to see the man's appointment renewed, if honourable senators see fit to support this motion.

**Senator Lynch-Staunton:** Honourable senators, I have no objection to the reappointment of Mr. Phillips. However, it would be to the advantage of all honourable senators for the Privacy Commissioner and other officers of Parliament to appear before us on a regular basis to explain exactly how they are carrying out their responsibilities, how they need the support of Parliament, and how Parliament can help them to carry out their responsibilities even more effectively. That is a suggestion, and I believe I see agreement on both sides.

**Hon. Marcel Prud'homme:** Honourable senators, I am pleased to see such full agreement on both sides. In my view, there are three sides in the Senate. I made a speech on the great qualifications of Mr. Bruce Phillips years ago. I never regretted it, but I remember that not everyone was pleased at the time.

• (1540)

I am pleased by the suggestion by Senator Lynch-Staunton that we should make every effort possible. I cannot speak for the other independent senators, and I would never dare to speak on behalf of the four great personalities who sit as independents.

Honourable senators, I will not interfere with the agreement that seems to be developing here this afternoon. I should like to endorse Senator Lynch-Staunton's suggestion that the commissioner come here. If all independent senators are still here, it will be difficult for anyone to say, "Well, I would have objected if I had been there." Honourable senators, I think there will be unanimous consent to go along with what is being proposed today. Senator Lynch-Staunton has my agreement. His is a good suggestion.

**Senator Hays:** I thank all honourable senators for their cooperation in this matter. I shall recite what has transpired.

We will deal with this motion. However, the Leader of the Opposition in the Senate has made a request, which I have agreed to negotiate with my counterpart, Senator Kinsella. The essence of the agreement is for the matter to be placed on the Order Paper, whereby it will be put to the Senate that we wish to revert to Committee of the Whole when the commissioner's term expires and a new term for four months comes into effect. At that time, we will have the same type of discussion we had with Mr. Phillips the last occasion he appeared before honourable senators.

**The Hon. the Speaker *pro tempore*:** Is it your pleasure, honourable senators, to adopt the motion?

**Hon. Senators:** Agreed.

Motion agreed to.

## NATIONAL ARCHIVES OF CANADA ACT

### BILL TO AMEND—SECOND READING—DEBATE CONTINUED

On the Order:

Resuming debate on the motion of the Honourable Senator Milne, seconded by the Honourable Senator Chalifoux, for the second reading of Bill S-15, to amend the Statistics Act and the National Archives of Canada Act (census records).—(*Honourable Senator LeBreton*).

**Hon. Thelma J. Chalifoux:** Honourable senators, I speak today, with the permission of Senator LeBreton, in support of Bill S-15.

The Métis people and the First Nations were settled in Western Canada long before Louis Riel and the provisional government of the day negotiated the Manitoba Act. That was the beginning of Western Canada as we know it today. Indian treaties and the railroads were completed. Migration to the west began in earnest. The aboriginal nations were mobile and followed the buffalo herds for their food supplies.

Once the treaties were signed, the First Nations people were put on reserves, and the Department of Indian Affairs began to keep records of them from birth to death. These records are available today for genealogists, historians and families to access. In the meantime, the Métis and the new immigrants were being recorded in the census of the day.

New regulations of Parliament adopted in 1906, under the government of Sir Wilfrid Laurier, and clause 15.1 of the Statistics Act passed in 1918 served two purposes — they guaranteed privacy and encouraged people to tell the truth. This I can understand.

In the meantime, time has passed. Five or six generations of families have come and gone since this act was passed. Generations of Canadians and distant relatives who were left behind in the old world are not allowed to complete their family trees and histories.

The early 1900s were really the era of mass migration to the west. There were homesteads, farming, ranching and land grabs. It was one of the most exciting times in Western Canadian history. By depriving families, genealogists and historians from accessing important archival material, we are also depriving our children and grandchildren of the wonderful history to which their ancestors contributed — the development of Western Canada.

Honourable senators, I shall give you another reason why I support Bill S-15. The Métis Nation has been challenged for many years as to how we determine our lineage as an aboriginal

nation. This challenge would be easily met by being able to access the census of 1906 and later census records.

Since 1971, Métis leaders have argued that there is still a great need to identify ourselves through an enumeration process. We are challenged daily, as a nation of people, by both the private and public sectors. Let us take the example of employment equity initiatives. The First Nations and Inuit have government-approved cards, while we, as the Métis, are always challenged to prove our identity, even though the Constitution was amended in 1982 recognizing the Métis as one of the distinct groups within the aboriginal nations. If census information was made available and accessible, we would have the opportunity to validate our current registration process.

By supporting Bill S-15, we, as the Senate, will be unlocking the doors of the history of Western Canadians, from the Métis to all the newcomers. Our children must learn their lineage and the contributions that their ancestors, the Métis, the First Nations and the newcomers, made in developing Western Canada. Western Canadian history needs to be told. By unlocking the archival doors, we will be giving these descendants, the historians, the genealogists and the archivists an opportunity to tell our story.

On motion of Senator Chalifoux, for Senator LeBreton, debate adjourned.

## CRIMINAL CODE CORRECTIONS AND CONDITIONAL RELEASE ACT

### BILL TO AMEND—SECOND READING—DEBATE CONTINUED

On the Order:

Resuming debate on the motion of the Honourable Senator Cools, seconded by the Honourable Senator Watt, for the second reading of Bill C-247, to amend the Criminal Code and the Corrections and Conditional Release Act (cumulative sentences).—(*Honourable Senator Di Nino*).

**Hon. Consiglio Di Nino:** Honourable senators, I will not spend too much time on this issue today.

**Senator Taylor:** Thank God.

**Senator Di Nino:** I know that at least one of my colleagues wishes to catch a plane back to Alberta. I will not say it is Senator Nick Taylor, but I think we should get this bill off to committee as soon as possible. I do wish, however, to make a few comments first.

Honourable senators, among the many crimes in our society, murder and rape are two of the most vile. In one case, victims are robbed of their lives — in the other, their dignity. Victims of murder are denied the right to see life to its natural end. Those who are raped live on, forever burdened by the feelings of fear, guilt, anger and shame. In some cases, it may very well be a harsher sentence than death.



As things stand today, murderers and multiple murderers receive the same treatment. The same goes for rapists and multiple rapists. The Bernardos and the Olsons of this world pay no heavier penalty for their multiple crimes no matter how many men, women and children these evil people butcher. No matter how many lives they wreck, they are treated the same as other criminals. The unspeakable extra pain and suffering inflicted on their victims, their families, their friends and society is ignored. Not only is this not logical, it is not right. People like Bernardo are worse than the common criminal — far worse. I believe they deserve penalties that fit their crimes. They do not warrant the same forgiveness as society might bestow on those who commit other types of crimes. I support this bill. To borrow a phrase from someone else, there should be no bulk rate for murder and rape.

• (1550)

Honourable senators, I support this bill for another reason as well. The tide in this country is, again, moving toward a return to capital punishment. Canadians are losing their tolerance for crime. They are sick and tired of seeing people like Karla Homolka making deals and getting off easy. Personally, I do not agree with capital punishment, but many Canadians do. I think that this legislation will help lessen their desire to wreak vengeance through the further, unnecessary taking of human life.

Honourable senators, what is this bill really all about? Let me tell you. This bill gives judges an alternative when sentencing multiple murderers and multiple rapists. It allows them to impose consecutive sentences of up to 50 years. It does not force them to do so, but it gives them the choice. It makes such a choice available if and when the judges choose to use it. I agree with that. I believe it would be a useful tool for the judiciary to have, another arrow in their quiver. I firmly believe that judges would be extremely careful in their use of this option. I wish to remind honourable senators that a judge's decision can always be appealed.

Honourable senators, Albina Guarnieri waged a hard fight to get this bill through the other place, where it received extensive analysis. The three years it took to get here were not easy for her. At every turn, she was criticized, attacked, maligned and disparaged. She was even accused of being a shill for the Reform Party — surely the ultimate censure. Why? Because, honourable senators, she listened to what Canadians were saying and she stood up for what she believed in. She is fed up with a situation where the rights of the criminals seem to outweigh those of the victims, particularly those who commit the worst crimes.

Honourable senators, Bill C-247 restores some fairness to the process. I say bravo! This bill is a courageous move by a person committed to the just rights of victims. It is so courageous that a Toronto newspaper was moved to editorialize:

It is with respect and admiration that we salute a rare example of independent spirit within the ranks of the Liberal Party.

Obviously, not everyone agrees with this bill. Some point to the falling crime rate as a reason we do not need it. Others argue that consecutive sentences constitute undue punishment. Some even believe it is unconstitutional or that the bill fails to recognize the possibility of rehabilitation, to which I say that they are missing the point. The point is that justice is not about filling in the blanks. It is not about statistics. It is not murder equals X number of years and rape equals Y number of years. Justice is about people taking responsibility for and suffering the consequences of their actions. It is about allowing the judiciary the discretion to deliver appropriate verdicts in case of heinous crimes committed by evil people. Multiple rapes and multiple murders are heinous crimes.

Honourable senators, let us send this bill to committee as soon as possible. Let us have the committee members deal with it fully and expeditiously and report back to this chamber at the earliest possible time. By doing so, we will send a strong message to Canadians that we take this issue seriously. More important, we will be telling Canadians that sometimes parliamentarians listen to them.

**Hon. Sharon Carstairs:** Honourable senators, would the Honourable Senator Di Nino accept a question?

**Senator Di Nino:** I would be happy to do so.

**Senator Carstairs:** My question is very simple. My honourable friend talked about consecutive sentences and sentences of up to 50 years. Surely, if a person in this country is convicted of first- or second-degree murder, the sentence is for life. How can it be longer than that?

**Senator Di Nino:** Obviously, we are talking about the eligibility for parole. That is what the issue is all about. A judge would have the choice of setting eligibility for parole at something more than 10 years or 15 years. For example, it could be set at one day more, two years more or 25 years more. That is what we are talking about.

**Senator Carstairs:** Honourable senators, if someone is convicted and sentenced to life imprisonment, surely that means life. "Eligibility" means only that a person can be considered for parole after either 10 years or 25 years. It does not mean, as I understand it, that the sentence is less than for life. If an individual is on parole and violates any of the parole provisions, he or she is immediately returned to that life sentence. Is that how the honourable senator believes the Criminal Code works?

**Senator Di Nino:** Let me tell honourable senators what I believe, so that there is absolutely no misunderstanding. We are talking about the treatment of people who commit the worst kinds of crimes — that is, a situation where Olson and Bernardo can apply for parole after having served 15 years. I am saying and those who support this bill are saying that those people should not have that right.



Honourable senators, we trust the judiciary. This decision is not ours to make. We are merely giving the judiciary a choice to make decisions about people like Bernardo and Olson.

By way of example, a fellow in Toronto recently killed two sisters. He was found guilty but was already serving a sentence for murder, so he was put back in jail. Do honourable senators know what happened? There was no punishment for this man who killed two innocent young women, because he had already received the maximum sentence. We believe that is wrong.

**Hon. Nicholas W. Taylor:** Honourable senators, I should like to adjourn the debate if no one else wishes to ask a question at this time.

**Senator Carstairs:** I wish to move the adjournment, but I want to assure honourable senators that I will speak to this matter the first day after we return from our break.

**Hon. Marcel Prud'homme:** Honourable senators, I have a question for Senator Di Nino as well.

I am torn between making a speech and talking about the past, or placing a question on the record and asking my friend to respond.

• (1600)

Since there are two honourable senators who want to adjourn the debate, let me just say I am pleased that Senator Carstairs says that, at the first opportunity, she will speak to it. That means it is not a burial. It seems that Senator Taylor is saying the same thing.

This issue is close to me. When we agonized over the abolition of the death penalty, I was very active. The 25-year mandatory provision was the invention of a very good friend of mine, Jim Fleming. It was called the Fleming-Prud'homme amendment. We had the choice between the death penalty or a minimum of 25 years. Why did I choose Jim Fleming? It was because I believe in alliances. He was English-Canadian from Toronto and Protestant, I was French-Canadian from Quebec and Catholic, so there was no division. We almost lost the abolition of the death penalty, and probably would have if we had not come up with the 25-year minimum before people could be considered for parole.

The question is very simple. Sending the bill to the committee does not mean that we agree with it. However, we want the committee to do a very thorough study and to call as a witness Ms Guarnieri, who worked very hard on this bill. She is in a position to answer every question. Is that what you have in mind? Even though honourable senators may not agree with the bill, when the time comes, they will be ready to send it to committee, and then make up their minds at third reading.

**Senator Di Nino:** Honourable senators, it is the same as with any bill. What we will be doing in committee is looking at the provisions of this bill. Approval of the principle at second reading means that we feel that the bill is worthwhile enough to send on to committee.

On motion of Senator Carstairs, debate adjourned.

[Translation]

## INTERNAL ECONOMY, BUDGETS AND ADMINISTRATION

### SIXTH REPORT OF COMMITTEE ADOPTED

The Senate proceeded to consideration of the sixth report of the Standing Senate Committee on Internal Economy, Budgets and Administration (*budgets of certain committees*) presented in the Senate on February 29, 2000.—(*Honourable Senator Rompkey, P.C.*).

**Hon. Pierre Claude Nolin** moved the adoption of the report.

Motion agreed to, and report adopted.

[English]

## STATE OF HEALTH CARE SYSTEM

### REPORT OF SOCIAL AFFAIRS, SCIENCE AND TECHNOLOGY COMMITTEE REQUESTING AUTHORIZATION TO ENGAGE SERVICES—DEBATE ADJOURNED

The Senate proceeded to consideration of the fifth report of the Standing Senate Committee on Social Affairs, Science and Technology (budget—study on the state of the health care system in Canada) presented in the Senate on February 29, 2000.—(*Honourable Senator Kirby*).

**Hon. Marjory LeBreton:** Honourable senators, I move the adoption of the report.

**Hon. John Lynch-Staunton (Leader of the Opposition):** Honourable senators, there was an article not too long ago in a newspaper regarding the possibility of a conflict of interest on the part of the chairman of the committee. I am neither agreeing nor disagreeing, but since this will be a very important study, I should like to know that there is no conflict of interest, that the members of the committee are quite free and not under any influence, perceived or otherwise. I am sure that those who will follow the committee's activities will want to be reassured as well. I was hoping that Senator Kirby would be here to answer the allegation that was made, in all fairness to him.

I do not endorse the insinuation made in the newspaper, but I think he and any other member of the committee who may have some interest in health care should let us know so that we get off on the right foot with everything on the table.

I have no embarrassment in making this request because when Senator Kirby was chairman of the Banking Committee, he asked all his fellow committee members to reveal whether they had any association with any financial institution, and that was done. That was only proper. Unless there is some special haste in getting this motion out of this chamber, I should like to adjourn the debate.

On motion of Senator Lynch-Staunton, debate adjourned.

## FOREIGN AFFAIRS

### COMMITTEE AUTHORIZED TO EXTEND DATE OF FINAL REPORT ON STUDY OF CHANGING MANDATE OF THE NORTH ATLANTIC TREATY ORGANIZATION

**Hon. Peter A. Stollery**, pursuant to notice of March 1, 2000, moved:

That, notwithstanding the Orders of the Senate adopted on Thursday October 14, 1999, on Wednesday November 17, 1999 and on Thursday December 16, 1999, the Standing Senate Committee on Foreign Affairs, which was authorized to examine and report upon the ramifications to Canada: 1. of the changed mandate of the North Atlantic Treaty Organization (NATO) and Canada's role in NATO since the demise of the Warsaw Pact, the end of the Cold War and the recent addition to membership in NATO of Hungary, Poland and the Czech Republic; and 2. of peacekeeping, with particular reference to Canada's ability to participate in it under the auspices of any international body of which Canada is a member, be empowered to present its final report no later than April 14, 2000;

That the Committee retain all powers necessary to publicize the findings of the Committee contained in the final report until April 28, 2000; and

That the Committee be permitted, notwithstanding usual practices, to deposit its report with the Clerk of the Senate, if the Senate is not then sitting; and that the report be deemed to have been tabled in the Chamber.

Motion agreed to.

• (1610)

## CANADA-UNITED STATES RELATIONS

### MANITOBA—EFFECT OF DIVERSION OF DEVIL'S LAKE, NORTH DAKOTA

Leave having been given to revert to Senators' Statements:

**Hon. Sharon Carstairs:** Honourable senators, I have asked for leave to revert to Senators' Statements because I agree fully with Senator Lynch-Staunton that we should do this at the end of the day if we are not in our seats at the appropriate time.

Honourable senators, over 13,700 individuals have now signed a petition in opposition to the Devil's Lake diversion with which the government of North Dakota is determined to proceed.

This diversion project is not in the best interests of the people of my province of Manitoba. The diversion would see water drained out of Devil's Lake and into the rivers that link to the Red River, which flows through most of southern Manitoba and right through the middle of Winnipeg.

The potential for greater flooding of the Red River is significant. Even more problematic is the potential of foreign fish and other plant and animal life to cause serious environmental damage.

The State of North Dakota is unwilling to delay this project for a full environmental assessment. There is no doubt in my mind that they will never conduct a true environmental assessment of this project.

It is time for the Government of Canada to act. This is an international waterway. Canada has the right and, in my view, the duty to commence an environmental assessment study in cooperation with the Province of Manitoba immediately.

The Honourable Lloyd Axworthy and our Ambassador to the United States, Raymond Chrétien, have added their voices to the need to stop this diversion project. We have been fortunate in this house to have heard on several occasions from the Honourable Senator Janis Johnson, who has also made strong arguments in favour of an environmental assessment study. However, all require the ammunition that only an independent environmental assessment study can provide. I urge the government to act immediately.

## ADJOURNMENT

Leave having been given to revert to Government Notices of Motions:

**Hon. Dan Hays (Deputy Leader of the Government),** with leave of the Senate and notwithstanding rule 58(1)(h), moved:

That when the Senate adjourns today, it do stand adjourned until Tuesday, March 21, 2000, at 2 p.m.

Motion agreed to.

The Senate adjourned until Tuesday, March 21, 2000, at 2 p.m.



**THE SENATE OF CANADA**  
**PROGRESS OF LEGISLATION**  
**(2nd Session, 36th Parliament)**  
**Thursday, March 2, 2000**

**GOVERNMENT BILLS**  
**(SENATE)**

No.	Title	1st	2nd	Committee	Report	Amend.	3rd	R.A.	Chap.
S-3	An Act to implement an agreement, conventions and protocols between Canada and Kyrgyzstan, Lebanon, Algeria, Bulgaria, Portugal, Uzbekistan, Jordan, Japan and Luxembourg for the avoidance of double taxation and the prevention of fiscal evasion with respect to taxes on income	99/11/02	99/11/24	Banking, Trade and Commerce	99/12/07	0	99/12/16		
S-10	An Act to amend the National Defence Act, the DNA Identification Act and the Criminal Code	99/11/04	99/11/18	Foreign Affairs	99/12/09	0			
S-17	An Act respecting marine liability, and to validate certain by-laws and regulations	00/03/02		Legal and Constitutional Affairs	99/12/16	2	00/02/09		

**GOVERNMENT BILLS**  
**(HOUSE OF COMMONS)**

No.	Title	1st	2nd	Committee	Report	Amend.	3rd	R.A.	Chap.
C-2	An Act respecting the election of members to the House of Commons, repealing other Acts relating to elections and making consequential amendments to other Acts	00/02/29							
C-4	An Act to implement the Agreement among the Government of Canada, Governments of Member States of the European Space Agency, the Government of Japan, the Government of the Russian Federation, and the Government of the United States of America concerning Cooperation on the Civil International Space Station and to make related amendments to other Acts	99/11/23	99/12/01	Foreign Affairs	99/12/09	0	99/12/14	99/12/16	35/99
C-6	An Act to support and promote electronic commerce by protecting personal information that is collected, used or disclosed in certain circumstances, by providing for the use of electronic means to communicate or record information or transactions and by amending the Canada Evidence Act, the Statutory Instruments Act and the Statute Revision Act	99/11/02		Subject matter 99/11/24	99/12/06		99/12/09		
C-7	An Act to amend the Criminal Records Act and to amend another Act in consequence	99/11/02	99/11/17	Social Affairs, Science and Technology	99/12/07	2			
C-9	An Act to give effect to the Nisga'a Final Agreement	99/12/14	00/02/10	Legal and Constitutional Affairs	99/11/30	4	99/12/08		



C-21	An Act for granting to Her Majesty certain sums of money for the public service of Canada for the financial year ending March 31, 2000	99/12/14	99/12/15	-	-	-	99/12/16	99/12/16	36/99
------	--	----------	----------	---	---	---	----------	----------	-------

## COMMONS PUBLIC BILLS

No.	Title	1st	2nd	Committee	Report	Amend.	3rd	R.A.	Chap.
C-247	An Act to amend the Criminal Code and the Corrections and Conditional Release Act (cumulative sentences)	99/11/02							
C-202	An Act to amend the Criminal Code (flight)	00/02/08	00/02/22	Legal and Constitutional Affairs	00/03/02	0			

## SENATE PUBLIC BILLS

No.	Title	1st	2nd	Committee	Report	Amend.	3rd	R.A.	Chap.
S-2	An Act to facilitate the making of legitimate medical decisions regarding life-sustaining treatments and the controlling of pain (Sen. Carstairs)	99/10/13	00/02/23	Legal and Constitutional Affairs					
S-4	An Act to provide for judicial preauthorization of requests to be made to a foreign or international authority or organization for a search or seizure outside Canada (Sen. Nolin)	99/11/02							
S-5	An Act to amend the Parliament of Canada Act (Parliamentary Poet Laureate) (Sen. Grafstein)	99/11/02	00/02/22	Social Affairs, Science and Technology					
S-6	An Act to amend the Criminal Code respecting criminal harassment and other related matters (Sen. Oliver)	99/11/02	99/11/03	Legal and Constitutional Affairs					
S-7	An Act respecting the declaration of royal assent by the Governor General in the Queen's name to bills passed by the Houses of Parliament (Sen. Lynch-Staunton)	99/11/02	00/02/22	Privileges, Standing Rules and Orders					
S-8	An Act to amend the Immigration Act (Sen. Ghitter)	99/11/02							
S-9	An Act to amend the Criminal Code (abuse of process) (Sen. Cools)	99/11/03							
S-11	An Act to amend the Criminal Code to prohibit coercion in medical procedures that offend a person's religion or belief that human life is inviolable (Sen. Perrault, P.C.) (Dropped from Order Paper pursuant to Rule 27(3) 00/02/08) (Restored to Order Paper 00/02/23)	99/11/04							
S-12	An Act to amend the Divorce Act (child of marriage) (Sen. Cools)	99/11/18							
S-13	An Act to assist in the prevention of wrongdoing in the Public Service by establishing a framework for education on ethical practices in the workplace, for dealing with allegations of wrongdoing and for protecting whistleblowers (Sen. Kinsella)	99/12/02	00/02/22	National Finance					

S-13	An Act to amend the Statistics Act and the National Archives of Canada Act (census records) (Sen. Milne)	99/12/10
S-16	An Act respecting Sir John A. Macdonald Day (Sen. Grimard)	00/02/22

PRIVATE BILLS

No.	Title	1st	2nd	Committee	Report	Amend.	3rd	R.A.	Chap.
S-14	An Act to amend the Act of incorporation of the Board of Elders of the Canadian District of the Moravian Church in America (Sen. Taylor)	99/12/02	99/12/07	-	-	-	99/12/08		

**SENATORS' STATEMENTS****Arctic Winter Games 2000**

Whitehorse, Yukon, Senator Christensen ..... 755

**Canada-United States Relations**

Manitoba—Effect of Diversion of Devil's Lake, North Dakota.  
Senator Johnson ..... 755

**Canadian Radio-television and Telecommunications Commission**

Ruling Denying TVOntario Request to Distribute Télévision  
française de l'Ontario in Quebec. Senator Gauthier ..... 756

**House of Commons**

Changes to Rules—Effect on Parliamentary Democracy.  
Senator Tkachuk ..... 756

**ROUTINE PROCEEDINGS****The Estimates, 1999-2000**

Tabling of Supplementary Estimates (B). Senator Hays ..... 757

**Criminal Code (Bill C-202)**

Bill to Amend—Report of Committee. Senator Milne ..... 757

**The Estimates, 1999-2000 The Estimates, 2000-2001**

National Finance Committee Authorized to Study Main Estimates,  
2000-2001 and Supplementary Estimates (B), 1999-2000.  
Senator Hays ..... 757

**Marine Liability Bill (Bill S-17)**

First Reading. Senator Hays ..... 758

**Canada-Japan Inter-Parliamentary Group**

Eighth Annual Asia-Pacific Parliamentary Forum,  
Canberra, Australia—Report Tabled. Senator Hays ..... 758

**Transport and Communications**

Notice of Motion to Authorize Committee to Study State  
of Transportation Safety and Security. Senator Bacon ..... 758

**QUESTION PERIOD****National Defence**

The Budget—Allocation for Replacement of Sea King Helicopters.  
Senator Forrestall ..... 758  
Senator Boudreau ..... 758

**Heritage**

New War Museum—Possible Government Contribution.  
Senator Forrestall ..... 759  
Senator Boudreau ..... 759

**Transport**

Air Canada—Effect of Bill Setting Out Obligations.  
Senator LeBreton ..... 759

Senator Boudreau ..... 760

National Highway Policy—Government Position.

Senator Kinsella ..... 760

Senator Boudreau ..... 760

The Budget—Toll Funding for Highway Infrastructure.

Senator Kinsella ..... 760

Senator Boudreau ..... 760

Senator Buchanan ..... 761

**United Nations**

Government Commitments to Alleviate Poverty to

Human Rights Committee. Senator Wilson ..... 761

Senator Boudreau ..... 761

**Foreign Affairs**

Cuba—Efficacy of Quiet Diplomacy. Senator Andreychuk ..... 762

Senator Boudreau ..... 762

Senator Andreychuk ..... 762

**Delayed Answer To Oral Question**

Senator Hays ..... 763

**The Senate**

Motion to Establish Office of Children's Environmental Health—  
Response of Government.

Question by Senator Spivak.

Senator Hays (Delayed Answer) ..... 763

**ORDERS OF THE DAY****Canada Elections Bill (Bill C-2)**

Second Reading—Debate Adjourned. Senator Hays ..... 763

Senator Nolin ..... 766

Senator Prud'homme ..... 767

**The Estimates, 2000-01**

Motion to Refer Parliament Vote 10 to Joint Committee on  
Library of Parliament and Privy Council Vote 25  
to Joint Committee on Official Languages Adopted.

Senator Hays ..... 767

**Privacy Commissioner**

Motion to Extend Term of Appointment Adopted.

Senator Hays ..... 768

Senator Lynch-Staunton ..... 768

Senator Prud'homme ..... 768

**National Archives of Canada Act (Bill S-15)**

Bill to Amend—Second Reading—Debate Continued.

Senator Chalifoux ..... 769

**Criminal Code****Corrections and Conditional Release Act (Bill C-247)**

Bill to Amend—Second Reading—Debate Continued.

Senator Di Nino ..... 769

Senator Carstairs ..... 770

Senator Taylor ..... 771

Senator Prud'homme ..... 771



## CONTENTS

Thursday, March 2, 2000

	PAGE		PAGE
<b>Internal Economy, Budgets and Administration</b>		<b>Foreign Affairs</b>	
Sixth Report of Committee Adopted. Senator Nolin .....	771	Committee Authorized to Extend Date of Final Report on Study of Changing Mandate of the North Atlantic Treaty Organization. Senator Stollery .....	772
<b>State of Health Care System</b>		<b>Canada-United States Relations</b>	
Report of Social Affairs, Science and Technology Committee Requesting Authorization to Engage Services—Debate Adjourned. Senator LeBreton .....	771	Manitoba—Effect of Diversion of Devil's Lake, North Dakota. Senator Carstairs .....	772
Senator Lynch-Staunton .....	771	<b>Adjournment</b>	
		Senator Hays .....	772
		<b>Progress of Legislation</b> .....	i









*If undelivered, return COVER ONLY to:*  
Public Works and Government Services Canada —  
Publishing  
45 Sacré-Coeur Boulevard,  
Hull, Québec, Canada K1A 0S9



CANADA

# Debates of the Senate

2nd SESSION

• 36th PARLIAMENT

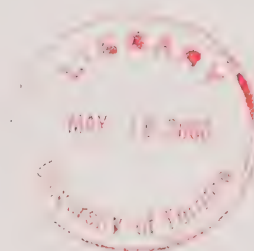
• VOLUME 138

• NUMBER 36

OFFICIAL REPORT  
(HANSARD)

**Tuesday, March 21, 2000**

—  
**THE HONOURABLE GILDAS L. MOLGAT  
SPEAKER**



## CONTENTS

(Daily index of proceedings appears at back of this issue.)

*Debates*: Chambers Building, Room 943, Tel. 996-0193

---

Published by the Senate

Available from Canada Communication Group — Publishing, Public Works and  
Government Services Canada, Ottawa K1A 0S9,

Also available on the Internet: <http://www.parl.gc.ca>



## THE SENATE

Tuesday, March 21, 2000

The Senate met at 2:00 p.m., the Speaker in the Chair.

Prayers.

### SENATORS' STATEMENTS

#### CANADIAN INTERUNIVERSITY ATHLETIC UNION BASKETBALL CHAMPIONSHIPS

##### CONGRATULATIONS TO ST. FRANCIS XAVIER UNIVERSITY

**Hon. B. Alasdair Graham:** Honourable senators, as a lifetime supporter of university athletics, I wish to draw to your attention one of the truly great moments in sport, when the St. Francis Xavier University X-Men and the Brandon University Bobcats squared off in the final game of the Canadian Interuniversity Athletic Union basketball championships at the Metro Centre in Halifax last Sunday afternoon.

I must admit to a bit of St. FX partisanship. Blood curdling shouts filled the living room as St. FX's spectacular point guard Randy Nohr scored the final four points in the riveting 40 seconds of a cliff-hanger which was probably one of the most exciting games I have ever seen anywhere. I found myself thinking back to Yogi Berra's basic common sense wisdom: The game ain't over 'til it's over!

No, it is not, I thought, as I watched the triumph of victory and the pain of defeat flood across the faces of over 8,000 fans at Halifax's Metro Centre as the X-Men celebrated their 61 to 60 championship victory — a victory which only moments before seemed impossible. I thought about the spirit of university athletics and all the fine people who give so much to keep this spirit alive. I thought about the young people who learn to play the game with brains, with heart and with soul. I thought about the spirit of excellence that inhabits our rinks and gyms and playing fields from coast to coast. I thought about young Canadians from the University of Lethbridge and Concordia, from Laurentian and Western, from McMaster and the University of Alberta, from Brandon to St. FX — all the great teams which made it to the nationals in the tremendous competition for the CIAU championship. I thought about the pain of training and the long hours of practice. I thought about kids learning to reach out way beyond their fingertips to perform heroics often they, themselves, did not think were possible. I thought about the wonderful people who, for so many years, have organized this annual event in Halifax. I thought about those who dedicate themselves to teaching and coaching our young people — teaching them to fly higher, to set their sights on a dream, to skate faster and stronger, to make those eye-popping shots, to

play with pride and to remember always that no matter how much and how tough life can get, "it's not over 'til it's over."

While I want to congratulate all the fine athletes and their coaches from the participating universities, I must say a few special words of tribute to the St. FX family of which I have been privileged to be a part — to coach Steve Konchalski, a star hoopster in his own time at Acadia University and 25-year athletic teacher and coach at St. FX, who just gained his second national championship as coach, the first having come in 1993; to my old friend Packy McFarland, the athletic director who will be retiring this year after 40 years at St. FX; and to president Sean Riley, a Rhodes Scholar whose great leadership and humanity are well known across the nation.

Today, the town of Antigonish is awash in blue and white. It is a tribute to the Antigonish community, which has supported St. FX through thick and thin since 1855. It was truly a universal manifestation of support for a sport that not only reveals character but also helps to build it. May we see more support for university athletics at every level, in every sport, for men and women in every community in this great country!

[Translation]

• (1410)

### INTERNATIONAL WOMEN'S DAY

**Hon. Lucie Pépin:** Honourable senators, on March 8, we celebrated International Women's Day. The event was particularly remarkable this year, because we welcomed the new millennium with the launch of the Year 2000 Women's March. In 150 countries around the world, groups of women joined together in support of a unprecedented movement of solidarity in a fight against poverty and violence against women.

The most exciting part of this march is that it was the largest undertaking by women ever and it originated here. The Fédération des femmes du Québec had the idea in 1995, at the end of the Fourth World Conference on Women in Beijing.

The organization of this march arises out of a long and glorious tradition of solidarity and advocacy among Quebec women. In 1828, the women of Lower Canada took to the streets to protest their exclusion from polling stations. In the early 1900s, women textile workers in Montreal went on strike on several occasions to protest against their working conditions and low salaries.

In the 1930s, a group of Quebec women, *La Solidarité féminine*, organized a series of public protests against rent increases, unemployment and the cost of living to bring attention to the plight of women during the Depression. More recently, in 1995, the *Fédération des femmes du Québec* organized the bread and roses march to focus on women's poverty. For two hundred years in Quebec, women have acted in solidarity and fought to improve the status of women and their quality of life.

As we can see, the reason behind women's rallies has not changed much. It is still called poverty. The worldwide Year 2000 Women's March was no exception. Its aim: to demand a new economic order based on social justice, to demand that the elimination of poverty in our societies and throughout the world not simply be an objective but a fundamental human right and to put an end to all forms of violence against women.

[English]

Women from all over the world came together to formulate a very concrete set of demands for change, demands they are determined to win. Women's groups on five continents marked the occasion of International Women's Day by publicizing these demands to decision-makers. They also began a signature campaign across the globe in favour of these demands. On October 15 of this year a World March delegation will publicize these demands to the World Bank and International Monetary Fund in Washington, and on October 17 the demands will be presented to the United Nations in New York.

[Translation]

If indeed globalization has aggravated the isolation and poverty of the most vulnerable people on this earth, it has also improved the opportunities for those who are discontented to unite in order to do battle against these forces on a worldwide scale. There is strength in numbers.

Honourable senators, I call upon you as decision-makers to look very seriously at the demands being made by the women involved in the Year 2000 World March. Their demands reflect the universal needs and priorities of women in Canada and throughout the world. They comprise concrete and achievable measures for the elimination of poverty and violence in our societies, and they absolutely must be given consideration.

[English]

## NORTH ATLANTIC TREATY ORGANIZATION

### FIRST ANNIVERSARY OF INTERVENTION IN KOSOVO

**Hon. J. Michael Forrestall:** Honourable senators, March 24 is a historic day. One year ago, on that sad day, the first and hopefully only offensive NATO attack on a sovereign state in the alliance's history took place. Canadian Forces personnel

served alongside their allied NATO service personnel to stop ethnic cleansing in Kosovo directed by the Milosevic government. Theirs was a noble pursuit in a war without clear objectives and lacking a clear and viable strategy.

NATO governments unwittingly set up the Balkans and Yugoslavia for its next round of war. Every day, Serbs and ethnic Albanians are killed by each side's paramilitary forces and by special forces in a war that has not stopped. Rural Kosovo has the same murder rate, for example, as the city of Los Angeles. It is a tragedy.

Now a splinter group of the KLA is intent upon liberating the towns directly across the border from northern Kosovo in the Presevo Valley. It has started attacking Serbs in the valley. The United States is warning its soldiers that they must be prepared to fight Albanians and the KLA, particularly around Mitrovica.

NATO forces face the possibility of fighting "hot-pursue battles" with Yugoslav forces. These forces, responsible for so many innocent deaths, are now demanding re-entry into Kosovo based on the ceasefire accords, and they are backed by the Russians.

Worse is to come in Montenegro, where the Milosevic government is seemingly on the verge of launching a takeover of that small state's legitimate government.

One year after Kosovo, with approximately some 3,000 Canadian troops in the Balkans, Canada and our NATO allies are on the verge of war and, as usual, we are not being briefed by this government. There is no debate in Canada about the prospects they sense for more war.

[Translation]

## LA FRANCOPHONIE WEEK

**Hon. Rose-Marie Losier-Cool:** Honourable senators, to me French is not only the language that I grew up in, it is also the language that shaped me. In other words, French is the language of both my intellect and my heart.

This week, from March 20 to 25, all francophone and Acadian communities from sea to sea will be celebrating the *Semaine de la Francophonie*.

This year, as part of the celebrations of the Week "Rendez-vous with our French-Canadian Heritage" will include the launch of RFA — Réseau Francophone d'Amérique — a Canada-wide network serving 500,000 francophone listeners in six provinces and two territories.

RFA will offer francophone and Acadian communities an excellent way of reaching mutual understanding and of getting to know each other without concern for geographical boundaries. Canadian unity will gain from this.



In February, at Rideau Hall, with the Governor General of Canada, the Right Honourable Adrienne Clarkson, acting as honorary chair, the Fédération des communautés francophones et acadienne du Canada launched a new consultation project called Dialogue. This major undertaking seeks to promote francophone and Acadian communities, and to create links between them and the various components of Canadian society.

Through public and private meetings, the Dialogue team also hopes to establish strong ties between francophones in a minority situation, other francophones, anglophones, ethnocultural groups and aboriginal people.

Such initiatives help us counteract the dangers that threaten the Francophonie. According to the Agence de la Francophonie, which is headed by Boutros Boutros-Ghali, two great dangers threaten the international Francophonie, namely the Internet and the European Union.

English is used in 98 per cent of the existing Web sites on the Internet, which is widely used as a means of communication, entertainment, information and others. The Internet is an excellent medium that allows us to communicate, do business and have a window on the outside world without leaving home. Francophones have a great need for the Internet, considering the great distances that separate them, both in Canada and around the world.

The Prime Minister of Canada, the Right Honourable Jean Chrétien, reiterated his support to the Francophonie when he said this about the Jeux de la Francophonie, which will be held in Ottawa-Hull in 2001:

Canada has a responsibility to francophone communities and it must act as a leader to create French Web sites, so as to help francophones in a minority situation in Canada, but also francophones around the world.

• (1420)

Within the European Union, that international organization with a European outlook, translation is very expensive because of the many member countries. In the interests of economy, talks are being held to decide whether English will be adopted as the organization's language of work.

Living our lives in our language, but also sharing it with as many people as possible, is one part of the linguistic heritage of French-speaking Canadians. I am thinking of the 300,000 students enrolled in French immersion across Canada.

At the Sommet de la Francophonie held in Moncton, New Brunswick, last September, the young and the not-so-young had an opportunity to mingle with citizens from around the world whose common link was the French language. The many activities at that event restored a sense of belonging, pride and

vitality not just to New Brunswick's Acadian community, but to all francophones in Canada.

In conclusion, I offer my congratulations to Senator Joyal, who yesterday was made an officer of the Ordre de la Pléiade for his achievements in the field of official languages and the Francophonie, and I wish everyone a "bonne semaine de la Francophonie"!

[English]

## ECONOMIC DEVELOPMENT EDMONTON

**Hon. Douglas Roche:** Honourable senators, I wish to say a word about Edmonton, inspired by the outstanding annual luncheon meeting of 1,361 people last week where Economic Development Edmonton showcased an economic vitality that is the envy of the rest of Canada. If honourable senators get the idea that I am bragging about my hometown, they are right, but it is hard to be modest when you consider the following:

Edmonton's total GDP growth in 2000 will be 4.1 per cent, the strongest gain among large Canadian cities. The construction industry will grow 7.6 per cent.

Edmonton currently has the second-best employment growth in the nation at 2.8 per cent and was rated by *Industry Week* magazine as the best Canadian city for productivity.

Edmonton was rated by the *Places Rated Almanac* as number one in Canada for the lowest cost of living.

Edmonton has been rated the best major city in Central to Western Canada and the United States in which to locate a business and has the lowest costs for Class A office space in the world.

Edmonton has been named one of the top-three smart cities in America in a competition of 350 cities.

On top of all this, Edmonton has 1,687 sports fields, 17 public swimming pools, not to mention a world-class institution in the University of Alberta.

Honourable senators, of course the international oil sector boom, with its related oilsands projects, impacts favourably on Edmonton's economy, but Edmonton is also moving ahead because of the development of knowledge-based sectors, public/private alliances and continued enhancement of the educational, training and research institutes.

"We like doing business here," says Bobbie Gaunt, President and CEO of Ford Motor Company of Canada.

In Edmonton, there exists a very high quality of life and low cost of living, combined with a skilled and diverse workforce that includes a significant number of potential employees who speak both English and French.



Economic Development Edmonton, led by Gary Campbell and Jim Edwards, two great community leaders who work alongside Mayor Bill Smith, is putting Edmonton on the map. They are, in fact, blowing our cover as Canada's best-kept secret, but I guess we cannot hide it any longer — especially with 5 million visitors to Edmonton last year and even more in 2001 with the World Championship in Athletics brings representatives from 200 countries.

I know honourable senators want to learn more about Edmonton, so run — do not walk — to your computers and go to Economic Development Edmonton's innovative new Web site at [www.ede.org](http://www.ede.org).

### INTERNATIONAL DAY FOR THE ELIMINATION OF RACIAL DISCRIMINATION

#### TRIBUTE TO DR. FENG SHAN HO

**Hon. Vivienne Poy:** Honourable senators, on this International Day for the Elimination of Racial Discrimination, I pay tribute to the late Dr. Feng Shan Ho, Consul General of China in Vienna, one of the very few diplomats who acted against his own government by issuing visas to allow Jews to flee Nazi-annexed Austria.

Dr. Ho's story is among those told by Visas for Life, part of the Righteous Diplomats Project to be exhibited at the United Nations next month.

Feng Shan Ho was born on September 10, 1901 in rural China. Despite being poor and fatherless at age seven, he managed to graduate *magna cum laude* with a Doctorate in Political Economics from the University of Munich. He then entered into the Foreign Service of the Chinese Republic and was posted to Vienna in 1937.

After the Third Reich's annexation of Austria on March 12, 1938, thousands of Jews swamped Vienna's foreign consulates, desperately seeking visas that would enable them to flee persecution. Many consulates, including Canada's, carried out discriminatory policies and did not grant visas to Jewish refugees.

Consul General Ho, however, issued visas to Shanghai for any and all who asked. Shanghai was then under Japanese occupation, and visas were not required for entry. However, a visa, as proof of emigration, was necessary to leave Austria.

The Nationalist Chinese government, which had diplomatic relations with Nazi Germany, instructed Dr. Ho to stop issuing visas, but he ignored his superiors. A year later, when the Nazis seized the Jewish-owned building that housed the Chinese consulate and his government refused to open a new office, Dr. Ho moved the consulate and paid all the expenses himself so that he could continue saving lives.

In August 1939, the Japanese military authorities in Shanghai curtailed the movement of Jewish refugees into China. Dr. Ho

left Vienna in May 1940, knowing that he had accomplished what he could do.

After serving four decades as a diplomat to different countries for the Nationalist Chinese government, Dr. Ho was discredited by his government when he retired to San Francisco in 1973 and was denied a pension for his 40 years of service. He died in 1999 at the age of 96. Dr. Ho will forever be remembered as a man firmly rooted in Confucian principles, a man of both intellect and compassion, and as a champion of humanity.

Honourable senators, the words of Dr. Feng Shan Ho are the most eloquent tribute to his actions:

I thought it only natural to feel compassion and to want to help. From the standpoint of humanity, that is the way I should be.

**The Hon. the Speaker:** Honourable senators, I regret to inform the Senate that the 15-minute period for statements is over. I have two other senators still on the list. Is leave granted?

**Hon. Dan Hays (Deputy Leader of the Government):** I would propose that we extend the time for Senators' Statements by six minutes.

**The Hon. the Speaker:** Is it agreed, honourable senators?

**Hon. Senators:** Agreed.

### THE LATE SANDRA SCHMIRLER

#### TRIBUTE

**Hon. A. Raynell Andreychuk:** Honourable senators, I should like to pay tribute to the life and legacy of Sandra Schmirler. In her short life, she showed us how to win, how to live, and how to face death with dignity and humour.

As Mr. Bob Hughes, Editor-in-chief of the *Regina Leader-Post* stated:

Sandra Schmirler was so down to earth, she had to come from small town Saskatchewan.

Of course she was. She was a product of Biggar, Saskatchewan, an area from which I came. I know full well its values and the nurturing community that proclaimed a sign indicating that it was the home of Sandra Schmirler.

In curling, she was a three-time women's world champion, Olympic gold medal winner, a Hall of Famer, and truly a great Saskatchewanian and a Canadian legend. Everyone who knew her remarked on her feistiness, her dedication to win, but also her never-failing commitment to her family and her community and to the principles of fair play, excellence, and doing your best. She handled her fame with ease and never forgot her roots. There was nothing false about Sandra Schmirler. She was as passionate about curling as she was dedicated to her family.

In the service at St. Peter's Anglican Church in Regina, the Reverend Don Wells stated these words:

Even youths will fade and be weary and the young will fall exhausted, but those who wait for the Lord shall renew their strength, they shall mount up with wings like eagles, they shall run and not be weary, they shall walk and not faint, but Sandra, they'll have to be in good shape to keep up with you.

• (1430)

In her short life, she found happiness and love with her husband, Shannon England, and her two very young daughters. Throughout, she found not only fame but respect in a sport that she genuinely adored. In her commitment to curling she truly turned it into a real Olympic event, inspiring players and fans, showing Canada as a country of curling, and legitimizing its true, incredible strength as a sport.

In a day when so many sports figures are less than noble, Sandra and her team shone as examples of the best of the sport, and she will leave a legacy of magnificence, mischief and poise — a truly great curling champion and a great Canadian, in all too brief a life.

I join all others in extending my condolences to Sandra's husband, her two young children and her extended family and friends.

[Translation]

#### INTERNATIONAL DAY FOR THE ELIMINATION OF RACIAL DISCRIMINATION

**Hon. Shirley Maheu:** Honourable senators, I should like to draw attention today to the International Day for the Elimination of Racial Discrimination. This year the day was prefaced with the twelfth annual March 21 campaign, aimed at raising public awareness of racism and encouraging individuals and organizations to contribute to the elimination of racial discrimination.

[English]

Racism does not have its place in the best country in the world in which to live, or anywhere else. It puts our social fabric into jeopardy and wounds individuals and groups, because racism divides instead of uniting. Racism weakens Canada's potential and puts a brake on our prosperity.

The annual March 21 campaign always advances different means to promote the values of respect, equality, and diversity, and they are mostly aimed at young people. These efforts must be recognized and underlined.

[Translation]

These efforts make it possible for us to live in a more just society, one that is more welcoming to all. I therefore wish to

express my support for the March 21 campaign, and I wish to state loud and clear: No more racism!

[English]

#### PAGES EXCHANGE PROGRAM WITH HOUSE OF COMMONS

**The Hon. the Speaker:** Honourable senators, I should like to introduce to you the pages who are with us this week from the House of Commons on the exchange program.

We have Jonathan Hubble from Waterloo, Ontario. Jonathan is studying political science at the Faculty of Social Sciences, University of Ottawa.

[Translation]

Meg Walker is a student in the University of Ottawa's Faculty of Arts. She comes from Fredericton, New Brunswick.

On behalf of all of the senators, I welcome you all to the Senate. We trust that your week with us will be interesting, enjoyable and worthwhile.

[English]

#### ROUTINE PROCEEDINGS

##### NATIONAL DEFENCE ACT

##### BILL TO AMEND—FIRST READING

**Hon. Dan Hays (Deputy Leader of the Government),** presented Bill S-18, to amend the National Defence Act (non-deployment of persons under the age of eighteen years to theatres of hostilities).

Bill read first time.

**The Hon. the Speaker:** Honourable senators, when shall this bill be read the second time?

On motion of Senator Hays, bill placed on the Orders of the Day for second reading on Thursday, March 23, 2000.

##### CANADA BUSINESS CORPORATIONS ACT CANADA COOPERATIVES ACT

##### BILL TO AMEND—FIRST READING

**Hon. Dan Hays (Deputy Leader of the Government),** presented Bill S-19, to amend the Canada Business Corporations Act and the Canada Cooperatives Act and to amend other Acts in consequence.

Bill read first time.



**The Hon. the Speaker:** Honourable senators, when shall this bill be read the second time?

On motion of Senator Hays, bill placed on the Orders of the Day for second reading on Thursday next, March 23, 2000.

**BILL TO GIVE EFFECT TO THE REQUIREMENT FOR CLARITY AS SET OUT IN THE OPINION OF THE SUPREME COURT OF CANADA IN THE QUEBEC SECESSION REFERENCE**

FIRST READING

**The Hon. the Speaker** informed the Senate that a message had been received from the House of Commons with Bill C-20, to give effect to the requirement for clarity as set out in the opinion of the Supreme Court of Canada in the Quebec Secession Reference.

Bill read first time.

**The Hon. the Speaker:** Honourable senators, when shall this bill be read the second time?

On motion of Senator Boudreau, bill placed on the Orders of the Day for second reading on Thursday, March 23, 2000.

**CANADIAN NATO PARLIAMENTARY ASSOCIATION**

REPORT OF DELEGATION TO DEFENCE AND SECURITY COMMITTEE MEETINGS HELD IN UNITED STATES TABLED

**Hon. Bill Rompkey:** Honourable senators, I have the honour to table the fourth report of the Canadian NATO Parliamentary Association, respecting its participation at meetings of the Defence and Security Committee, held in Washington, D.C. and Southern California, from February 1 to 8, 2000.

**REVIEW OF NON-PROLIFERATION TREATY**

NOTICE OF MOTION TO URGE NUCLEAR WEAPON STATES TO REAFFIRM COMMITMENT

**Hon. Douglas Roche:** Honourable senators, I give notice that on Tuesday next, March 28, 2000 I will move:

That the Senate recommends that the Government of Canada urge the Nuclear Weapon States to reaffirm their unequivocal commitment to take action towards the total elimination of their nuclear weapons, as called for by the non-proliferation treaty, which will be reviewed April 24 to May 19, 2000.

**SUDAN**

NOTICE OF INQUIRY

**Hon. Lois M. Wilson:** Honourable senators, I give notice that on Wednesday, March 29, I will call the attention of the Senate to the situation in the Sudan.

**QUESTION PERIOD**

**AGRICULTURE AND AGRI-FOOD**

FARM CRISIS IN PRAIRIE PROVINCES— FLOODING PROBLEM IN MANITOBA AND SASKATCHEWAN—REQUEST FOR RESPONSE

**Hon. Terry Stratton:** Honourable senators, my question is directed to the Leader of the Government in the Senate. Again, it is with regard to the agricultural situation.

The last round of the GATT negotiations took seven years and a further 10 years to work everything out, for a total of 17 years.

• (1440)

We are now heading into the next round of the WTO negotiations, which we can expect to last as long as the last round. It disturbs me that we seem to be merely looking at this issue on a year-by-year basis, while farmers are suffering. There is a gentleman out in front of the Parliament buildings today with his combine. He has come all the way from Dawson Creek which is a heck of a long way, to protest this very thing.

Before the Senate rose for its break, I asked the minister about the situation with respect to the flooding of farmland in southwestern Manitoba and southeastern Saskatchewan. He recognized that the \$400 million in aid went to all farmers in the two provinces, and he was going to get back to me as soon as possible with an update to the flooding in those two areas. Could I have a response, please?

**Hon. J. Bernard Boudreau (Leader of the Government):** Honourable senators, the Senator Stratton raises many points. First, I am informed that the man who has driven so far in his combine to be here in Ottawa and express his views to government at the highest levels, was received by the Prime Minister last evening. In fact, they had an opportunity at a 24 Sussex to exchange views in a very informal setting. That individual was given the opportunity to take his petition to the very top. I commend the Prime Minister for making those arrangements in what no doubt is a very busy schedule and for making time to meet with that individual.

With regard to the WTO negotiations, I can understand the honourable senator's frustration. I also understand the frustration of the farm community. The difficulties in which we find ourselves — and they do pose severe challenges — are brought on by a number of issues. One is the uneven playing field, which we have discussed previously in this chamber. We see the European Union and the United States delivering large subsidies to their farmers, which makes matters worse for our Canadian farmers. In addition, a series of bumper crops virtually everywhere in the world has placed pressure on the markets.



Honourable senators, we have no alternative but to continue our efforts at the world trade forum in an attempt to level the playing field. I would not begin to suggest that it will be easy or quick. However, I am encouraged by the views of the minister that these discussions can begin again productively and that we may look forward to some concrete results.

With respect to the program for the particular farm communities in Saskatchewan and Manitoba to which the honourable senator referred, I unfortunately have not had an opportunity to speak to the Minister of Agriculture over the break. However, I undertake to do so in the next couple of days and to return with a response for the honourable senator.

**Senator Stratton:** Honourable senators, it is amazing that the minister offers congratulations to the Prime Minister for meeting with this individual. Why on earth did this man have to come all the way he did to get some attention? Why do farmers have to resort to things like this when there is such a crisis? The government is doing nothing in the area of long-term support. There are large export subsidies in the European Union and direct subsidies in the United States, yet Canadian farmers have virtually nothing by comparison. Still, the minister congratulates the Prime Minister for having an individual drive his combine all the way from out west to make a point. He has to be kidding.

**Senator Boudreau:** Honourable senators, the point I was trying to make is that the individual who has come here was seeking to meet with the Prime Minister, and the response was positive. I venture to say he most likely appreciated the opportunity to meet with the Prime Minister.

To say that the government has done nothing is to ignore the scene in this very building where the Premiers of Saskatchewan and Manitoba stood side by side with the Prime Minister and congratulated him on the action taken by the Government of Canada. No one suggests for a moment that this is the full answer or the long-term answer. It will require considerable effort and unfortunately some considerable time to deal with the fundamental issues presented here, but the Government of Canada has moved in a significant way and this is recognized by the premiers.

#### POSSIBILITY OF LONG-TERM SOLUTIONS

**Hon. Terry Stratton:** Honourable senators, the minister did not answer the question I asked about a long-term support program. This is critical. One cannot run a business without knowing what to expect tomorrow. Individual farmers are on the verge of bankruptcy because we are doing things piecemeal. They do not know what is happening in the long term. The United States and the European Union seem to be able to make arrangements that sustain their farmers. Will we leave our farmers out in the cold and simply react on an ad hoc basis year to year? Can we not do something for the long term?

**Hon. J. Bernard Boudreau (Leader of the Government):** Honourable senators, obviously the long-term solution is to work

toward levelling the playing field. Given the efficiency of our farmers, I do not even think we have to level the playing field completely. If we get it anywhere close to level, our farmers will be able to compete successfully. In the meantime, significant assistance will be offered, as has been the case over the recent months. The larger question will be advanced by the minister and by the government as quickly as possible.

[Translation]

#### THE SENATE

##### POSSIBILITY OF SPECIAL COMMITTEE TO STUDY CLARITY BILL

**Hon. Marcel Prud'homme:** Honourable senators, a few moments ago, the Speaker of the Senate informed us that he had received a message from the House of Commons along with Bill C-20 on the clarity of the referendum question that could be put to the people of Quebec.

Would the minister consider referring this bill to a special committee of the Senate and not to the Standing Committee on Legal and Constitutional Affairs? The Standing Committee on Legal and Constitutional Affairs already has a lot of work before it. It would be wise and healthy to consider this option before the debate begins.

[English]

I will speak as vaguely and as precisely as that old political master, Paul Martin Sr., the father of the present Minister of Finance, who was always precise but vague. I will try not to be vague but rather to be direct.

Will the minister consider creating a special committee of the Senate to study this very important piece of legislation, in order for the Standing Senate Committee on Legal and Constitutional Affairs to save time, and will the minister consider full consultation?

• (1450)

I know that independents are not members of that committee, which is all right. As you may have noticed, I do not talk about that any longer. However, would the minister at least consider telling us before the debate at second reading commences?

**Hon. J. Bernard Boudreau (Leader of the Government):** Honourable senators, at this stage no final decision has been made with respect to reference to a committee. I listened carefully to the points made by the honourable senator and will take them into account. A special or legislative committee may be established rather than referring the matter to a standing committee.

As to the question of independents on any given committee, I take the senator's comments seriously and may be in a position to respond in the near future.

## ENVIRONMENT

## RESIDENCY REQUIREMENT FOR JOB APPLICANTS

**Hon. Norman K. Atkins:** Honourable senators, my question is directed to the Leader of the Government in the Senate. It was reported last week that a Canadian now working in the United States who responded to a job advertised by Environment Canada was denied the opportunity to return to work as a chemist at Environment Canada because it was stipulated in the job description that only people now working or living in Canada would qualify, in spite of the fact that the person in question won the competition for the job.

Can the minister explain why Environment Canada has a residency requirement? Why would a Canadian residency requirement exclude a Canadian citizen living abroad who, under the Charter of Rights and Freedoms, is guaranteed the right to return to Canada and seek employment?

**Hon. J. Bernard Boudreau (Leader of the Government):** Honourable senators, that is a good question, and I wish I had a good answer. The Honourable Senator Atkins raises an interesting issue. I am not familiar with the details of that case, but I will seek to speak to the minister in question and will repeat, virtually verbatim, the question the honourable senator has raised. I will report back to him and to all honourable senators.

**Senator Atkins:** Honourable senators, I will send the minister a copy of the article.

I know the Prime Minister believes that the brain drain is a myth, but we know that it exists and that it has a real effect on Canada's productivity. Why would a government allow a requirement such as Canadian residency to specifically apply to Canadians living and working abroad who seek to come home and contribute to the reversal of the brain drain? Will the minister undertake to review this prejudiced residency requirement?

**Senator Boudreau:** Honourable senators, as I said, I will make the inquiry. There may be a reason for the requirement that we are not aware of, but I cannot think of one at the moment.

Frankly, we must encourage Canadian citizens living abroad to return to Canada. Some of the programs announced in the budget are predicated on getting people to return. The Chairs of Research Excellence program is an example. We are seeking 2,000 people to add to the post-secondary education structure of this country, individuals who are not now in the system. We will not likely find all of them in Canada. If we do find them all in Canada, it will wreak disruption among existing systems.

The honourable senator's question is timely, not only with respect to the instance to which he refers, but on the broader question.

## TRANSPORT

## PORT OF HALIFAX—COMPETITIVE SITUATION IN ATTRACTING LARGE CONTAINER SHIPS—POSSIBILITY OF RAISING BOND ISSUES

**Hon. J. Michael Forrestall:** Honourable senators, my question is directed to the Leader of the Government in the Senate. I am sure he was pleased, as were many Nova Scotians, to hear yesterday, and again this morning, reports of conversations between officials in the Orkney Islands and the Port of Halifax. Most of the information I heard came through David Bellefontaine, President and Chief Executive Officer of the port.

The conversations are with regard to the establishment of trans-shipment facilities between Halifax and Scapa Flow for the purpose of moving very large containers and the next generation of very, very large containers through Halifax on smaller ships or through Scapa Flow and on smaller ships into various ports in Europe.

At the same time, we were chagrined to read in *The Chronicle-Herald* a report that the Port of Halifax is having difficulty competing with heavily subsidized American ports. Although we knew that, it is disappointing to hear it again.

The government was warned in hearings held by the Standing Senate Committee on Transport and Communications on the ports bill that, if it was not careful, the Port of Halifax might find itself not only without the cash to put that facility in place but, more important, the means of raising the required capital. The port is on its own and the government will not intervene unless it does so *ex gratia* or there is a special situation. The provincial newspaper has suggested that the current situation is more serious and that the government's lack of involvement may have undesirable consequences.

Can the minister find out from his colleagues whether anything has been done about a proposal that I fostered in the committee, that being to allow the Port of Halifax to float its own bond issues to raise the required capital?

**Hon. J. Bernard Boudreau (Leader of the Government):** Honourable senators, the Honourable Senator Forrestall was probably briefed on the announcement to which he refers before I will be, as I am scheduled to be briefed when I return to Halifax on Friday.

**Senator Forrestall:** Would the honourable leader let a whole week intervene without finding out?

**Senator Boudreau:** I would be happy to return to Halifax prior to Friday, but my duties will no doubt keep me here.



I had an opportunity two or three weeks ago to meet with the major shippers in the Port of Halifax. I had a good discussion with three or four of the largest shippers in and out of the port. I asked them precisely some of these questions with respect to the competitiveness of the port, where we stand now, and what the future looks like.

One of the messages I received was that the port situation is always extremely price sensitive. Shippers move based on a very small margin. While the shippers express that reservation, they are not concerned about the competitiveness of their situation. They believe that, at the moment at least, the port is competitive, with the caveat that it is price sensitive in terms of the amount of business and the location of the lines.

Large challenges, but also large opportunities, may be coming for the Port of Halifax along the lines suggested by the honourable senator. They should be considered. I am curious to see the potential impact of the proposed rail amalgamation, which would create a network across North America with only one eastern outlet, that being in Halifax.

• (1500)

There are many significant questions and I appreciate the senator bringing them forward. In my most recent meeting, the shippers informed me that the port is competitive.

#### NAVY ISLAND COVE, NOVA SCOTIA—POSSIBLE DEVELOPMENT OF SITE FOR LARGE CONTAINER SHIPS

**Hon. J. Michael Forrestall:** Honourable senators, with regard to what the leader was discussing, we know that there are some impediments to CN carrying out the necessary expansion that it wanted.

Honourable senators, it is highly unlikely now that the Port of New York authority will be able to complete the dredging required in anywhere near the time limits imposed upon it, due to the fact that no contract has been signed thus far. There is still a chance for Canada in the development of Halifax as a super port.

As cost is always a pertinent factor, would the minister convey to his cabinet colleagues the notion of looking at Navy Island Cove as the site for the next container facility? Navy Island Cove would allow for virtually unlimited expansion in water a few feet deep, as opposed to very deep waters. A third of the costs of the development of the facility could be saved through careful planning.

I would also advise the Leader of the Government that it is much easier to rent a facility that is already in place than it is to rent a promised one.

**Hon. J. Bernard Boudreau (Leader of the Government):** Honourable senators, I will ensure that Senator Forrestall's suggestion is addressed.

With respect to the honourable senator's comments on the Port of New York, Halifax was involved in a competition with New York and Baltimore to service the very extensive container traffic on the East Coast. It is important to understand that Halifax was not in competition with any other Canadian port. Halifax was the Canadian port competing as an alternative to the American ports.

In that competition, at least in the first round, it appeared that New York was given the edge by a major shipping line involved. However, many people believe that in our lifetime they will never unload a fully loaded post-Panamax container ship in the Port of New York. That is certainly the opinion of many distinguished people and I tend to agree.

Canada has a number of continuing opportunities: to become involved in a partial unloading facility in Halifax before carriers move on to New York or to resurrect Halifax as an initial or preferred port of destination. That will not happen automatically or with the facilities in place now. However, the honourable senator raises this matter at a critical time. The opportunities for the country and in particular for Halifax are significant.

#### VIA RAIL

##### IMPROVEMENT IN PASSENGER SERVICE

**Hon. J. Trevor Eyton:** Honourable senators, my question is directed to the Leader of the Government in the Senate. The government has put off for some time now an announcement of its plans to restructure VIA Rail. There was supposed to be an announcement last fall but it was put off by the airline crisis, and perhaps it is understandable that it was delayed for a few months.

I now read of a significant investment by the Export Development Corporation to build significant new railway structures and systems in the United States. These include, importantly, Bombardier.

I may not have any particular quarrel with the EDC investment in the U.S., although transparency would help a great deal in making any assessment of that investment. However, could the government leader advise the Senate as to exactly when we can expect an announcement on passenger rail service in this country along the same lines as that planned in the United States? When can we expect the government to provide improved rail service in Canada for Canadians?

**Hon. J. Bernard Boudreau (Leader of the Government):** In response to the honourable senator, I cannot give him the specific date of any announcement that would be made by the Minister of Transport. I can tell the honourable senator that it is obvious that investment must be made in Canada to ensure the continuing viability of passenger rail service. This issue is a priority for the Minister of Transport, and he is reviewing it currently. I anticipate that the honourable senator will see some sort of announcement in the relatively near future on that very point.



## HUMAN RESOURCES DEVELOPMENT

### JOB CREATION PROGRAMS—POSSIBLE MISMANAGEMENT OF FUNDS—REQUEST FOR APOLOGY

**Hon. W. David Angus:** Honourable senators, it is nice to be back in this chamber on such a nice day after such a nice and unexpected break.

What is not so nice at all, though perhaps more expected, is the worrisome manner in which the scandal of the mismanagement of the government's job creation grants has continued unabated during our absence, to the shocking point where today's press reports indicate that the number of federal job creation projects under police investigation has climbed to 21.

Honourable senators, this is the first occasion I have had to rise in this chamber since our honourable Speaker's ruling on March 1 on Senator Taylor's point of order of February 22. His Honour did indeed touch a soft spot with me for, of course, I neither wish to be not nice nor disrespectful to my friends and colleagues in this chamber and in the other place. I have great and genuine respect for our Speaker, his wisdom and good judgment.

Thus, for any colleague here or in the other place who feels any of my language during Question Period of February 22 was not nice, and if they were genuinely offended thereby, I wish them to know, here and now, that I respectfully retract such words.

**Some Hon. Senators:** Hear, hear!

**Senator Angus:** Honourable senators, there are now 21 costly police investigations ongoing into the horrendous government job creation scandal. We now have dozens of examples of companies and individuals with close ties to the government receiving such grants and then donating money to the very nice Liberal Party of Canada. There are also many examples of government departments ignoring and breaching established controls and nice little rules and procedures.

My question to the Leader of the Government in the Senate therefore is this: Would it not be nice, finally, to apologize to Canadians and to provide them with the real facts about this job creation grant boondoggle and the other examples of this government's gross mismanagement rather than continuing with transparent Liberal spin-doctoring?

**Hon. J. Bernard Boudreau (Leader of the Government):** Honourable senators, I appreciate the honourable senator's preamble to his question. I am not certain I would agree with where he ended up, but certainly his preamble I can support.

With respect to the RCMP investigations, obviously, the honourable senator does not expect me to comment on individual investigations. I certainly would not do so. The RCMP has an obvious duty, and arguably perhaps even a higher duty to respond to any allegation that involves the use of public money. No one has any argument with that.

• (1510)

The Prime Minister said as recently as Saturday, in a great speech to a fantastic convention, as I sat on the same platform, that if there is any misspending or any wrongdoing, then those responsible should be punished without reservation. We would all agree with that.

I also learned a little something over 20 years of practising law. We should also withhold our assessments until RCMP investigations reach their conclusions. More often than not, investigations end with a finding that nothing was amiss.

These programs, which we have discussed in great detail, have created many thousands of jobs all across this country. I have seen the individual results of giving to people the dignity of work — a phrase used by the Prime Minister at that great convention.

### JOB CREATION PROGRAMS—POSSIBLE MISMANAGEMENT OF FUNDS—REQUEST FOR STATISTICS ON JOBS CREATED

**Hon. W. David Angus:** Honourable senators, speaking of the Prime Minister's nice, little speech, yesterday the opposition in the other place asked why Placeteco Inc., a company in the Prime Minister's riding, received \$1.2 million in job grants although it had less people on the payroll after the money came in. In 1998, the company employed 81 people. As of March of this year, they only employed 78. The Parliamentary Secretary failed to answer the question in the other place.

Will the Honourable Leader of the Government in the Senate please tell us how a company could receive money from this government to create long-term, sustainable jobs and then actually have fewer people working for it after the grants were given? Will the minister please tell us how many jobs have actually been created using the funds from this \$1-billion boondoggle? Will he provide those numbers, please?

**Hon. J. Bernard Boudreau (Leader of the Government):** I would not want to speculate on that particular file, honourable senators, without having an opportunity to review the details of it. Not in every case of government programs do the jobs turn out to be permanent. Sometimes they are not, and we only give the dignity of work to individuals for a limited period of time. Even that limited period of time gives an opportunity for skill development, preparation for the job market and, one hopes, a more permanent opportunity.

I do not know the total number of jobs created, but I would be more than happy to obtain that information because I know the honourable senator will want me to share that information with all those in this place.

**DELAYED ANSWERS TO ORAL QUESTIONS**

**Hon. Dan Hays (Deputy Leader of the Government):** Honourable senators, I have a response to a question raised in the Senate on February 15, 2000, by Senator Kinsella regarding civil rights in Sudan and human rights violations; and a response to a question raised on February 29, 2000, by Senator Tkachuk regarding budget 2000 long-term benefits to taxpayers.

**FOREIGN AFFAIRS****CIVIL WAR IN SUDAN—HUMAN RIGHTS VIOLATIONS**

*(Response to question raised by Hon. Noël A. Kinsella on February 15, 2000)*

Resolution 1503 is a UN complaints mechanism which addresses "consistent patterns of gross and reliably attested violations of human rights and fundamental freedoms". The Government of Canada firmly supports this procedure and participates actively in deliberations under resolution 1503. The complaints procedure under resolution 1503 is confidential. Only a very few of the countries considered under this confidential procedure are referred to the UN Commission on Human Rights for public scrutiny.

The 1503 procedure addressed the human rights situation in Sudan until 1993, at which time it came under public consideration in the UN Commission on Human Rights. Every year since 1993, the UN Commission on Human Rights has adopted a resolution condemning human rights violations in Sudan and appointing a Special Rapporteur to report to the Commission and the UN General Assembly on the human rights situation in that country. Canada firmly supports this UN resolution — it is a cosponsor and is offering financial support to the Special Rapporteur to enable him to fulfil his mandate.

**BUDGET 2000****LONG-TERM BENEFITS TO TAXPAYERS**

*(Response to question raised by Hon. David Tkachuk on February 29, 2000)*

A single college graduate making \$45,000 a year will see their net federal taxes reduced by \$414 in the first full year of the implementation of tax changes (i.e. 2001).

By the fifth year, in 2004, there will be a tax saving of about 13 per cent, or \$935.

Since full tax reduction does not start until July 2000, tax reductions in 2000 will be a little more than 50 per cent of the tax savings in the first full year of impact.

**ORDERS OF THE DAY****MARINE LIABILITY BILL****SECOND READING—DEBATE ADJOURNED**

**Hon. George J. Furey** moved the second reading of Bill S-17, respecting marine liability, and to validate certain bylaws and regulations.

He said: Honourable senators, I am pleased to rise on second reading to bring to your attention this important piece of legislation, Bill S-17, respecting a new regime of shipowners' liability for passengers and a new rule of apportionment of liability in maritime cases. In addition, the proposed legislation will also consolidate existing marine liability regimes into a single statute.

The purpose of the proposed Marine Liability Act is to modernize Canadian legislation to reflect the reality of the integrated system of liability regimes and how they affect the economic position of shipowners, claimants, their respective insurers, and other allied interests. Shipping, by its very nature, is an international business and so it is not surprising that most of these liability regimes have been developed over the years by various international organizations, in particular, the International Maritime Organization.

Allow me, honourable senators, to remind you briefly of what is contained in the proposed Marine Liability Act.

The new regime of shipowners' liability to passengers sets out in Part 4 the principal policy objective of this bill. This is an initiative born out of the concerns for those passengers who may be involved in an accident during maritime transport. The proposed legislation is based on the 1974 Athens Convention as amended by its 1990 protocol. This legislation was previously introduced as Bill C-59 which died on the Order Paper when Parliament was dissolved in April 1997.

The intent of the regime of liability to passengers is to ensure that, in the event of a loss, particularly a major one, the claimants are guaranteed a set level of compensation.

A marine disaster in Canada of the magnitude experienced in Europe in recent years would undoubtedly generate a strong public reaction, and the government would be expected to act quickly and decisively to ensure that adequate compensation is available. The introduction of large vehicle ferries with large passenger capacity on both the east and west coasts of our country, coupled with the growing popularity of cruises both inside and outside Canadian waters, lends a sense of urgency to the problem of liability for the carriage of passengers by water.



Currently, there are no statutory provisions in Canadian law which establish the basis of liability for loss of life or personal injury to passengers travelling by ship. Thus, shipowners' liability to passengers must be established by the claimants in accordance with the ordinary rules of negligence. With the exception of the Quebec Civil Code, there is no Canadian legislation that specifically prevents our shipowners from contracting out of liability for loss of life or personal injury caused by their fault or negligence by inserting the appropriate exemption clauses into the contracts of carriage.

Foreign carriers serving Canada also generally either exempt themselves completely from any liability or impose very restrictive limits on the extent of their liability. At present, such contractual exemptions are null and void in the United States, France and Great Britain. This form of exemption raises concerns as, in most cases, the passenger has no alternative but to accept the terms and conditions offered. In addition, exemption clauses are often introduced in a manner which does not permit the passenger to fully appreciate their significance.

The continued absence of such legislation may prove to be highly detrimental to the interests of passengers travelling by ship in the event of a major disaster, as the carrier may not be sufficiently insured against the considerable losses resulting from such an incident.

Contractual exemptions from liability for passenger death or injury are generally absent in other modes of transport in Canada, or are expressly prohibited as in the air mode where the liability of air carriers to passengers has long been regulated by the Carriage By Air Act. There appears to be no basis for maintaining the contractual freedom currently enjoyed by water carriers.

Consultations with industry on this issue have been conducted on the basis of a discussion paper prepared by Transport Canada. The principal industry groups concerned are passengers, shipowners and their insurers, and the marine legal community. The majority of those associated with these groups believe that the absence of a liability regime for passengers is not acceptable. They support, or demand, an early adoption of new legislation on the issue of liability for the maritime carriage of passengers.

• (1520)

Honourable senators, allow me to turn to the second policy objective leading to new legislation in Part 2 of this bill.

For the first time in Canadian law, this legislation would provide a uniform regime of apportionment of liability applicable to all torts governed by Canadian maritime law. Over the years, two non-statutory precedents caused considerable concern in their possible application to maritime negligence claims in Canada.

First, the common-law defence of contributory negligence prevents a claimant from recovering anything if the defendant can prove the claimant's own negligence, even to the slightest

degree. If he can prove that this has contributed to the damages, there is no collecting.

Second, this rule also prevents one defendant who is found responsible to pay all damages to the claimant from claiming any contribution from other persons who may have contributed to the claimant's loss.

Historically, the common-law provinces under their constitutional power over "property and civil rights" recognized the harsh effects of these outmoded common-law rules and replaced them with legislation that allowed courts to apportion responsibility and that allowed litigation parties to claim contribution and indemnity from other persons. The Quebec Civil Code has always recognized these rights. However, legislation like provincial apportionment statutes has never been enacted by Parliament, except a few provisions which cover the relatively narrow topic of damage caused by collisions between ships.

As honourable senators will appreciate, many maritime claims involving serious personal injuries, fatalities and property damage do not involve collisions. Until the 1970s, the law was unclear whether courts could apply provincial apportionment laws to maritime claims. In some cases, courts applied the old common-law rule after deciding that provincial statutes could not apply constitutionally to negligence claims arising from navigation and shipping activities, both of which were seen as being in the realm of federal jurisdiction.

In recent decisions, the Supreme Court of Canada ruled that provincial apportionment statutes did not apply to maritime negligence claims, but the court also found that it was unjust to continue to apply the old common-law rules to such claims. In light of these decisions, new legislation is needed to establish a uniform set of rules that apply to all civil wrongs governed by Canadian maritime law. The legislation proposed in this bill would eliminate the uncertainty that currently exists as regards the legal basis for the apportionment of liability in maritime cases.

As I said before, honourable senators, this legislation would also consolidate existing marine liability regimes and related subjects, which are currently located in separate pieces of legislation. This bill is a one-stop shopping approach to marine liability, thus avoiding the future proliferation of separate legislative initiatives in this area of shipping policy.

Bill S-17 consolidates the following regimes and rules: fatal accidents, limitation of liability for maritime claims, liability for carriage of goods by water, and liability and compensation for pollution damage.

Current provisions on fatal accidents in Part XIV of the Canada Shipping Act are re-enacted in Part 1 of this bill, in appropriately modernized language. Some of the provisions raise the issue of "relationship of dependency," a subject that is dealt with concurrently in Bill C-23, to modernize the Statutes of Canada in relation to benefits and obligations.



Thus, Part 1 of this bill would not come into force until the legislative processes of Bill C-23 were completed. Bill C-23 would serve as the basis for new regulations required under Part 1 in this bill respecting the definition of "relationship of dependency."

As honourable senators may be aware, the enactment of this omnibus legislation is a government initiative which aims to reflect values of tolerance, respect and equality consistent with the Canadian Charter of Rights and Freedoms.

The next regime that I would like to bring to your attention, honourable senators, is the limitation of liability for maritime claims, set out in Part 3 of this bill. This regime, transferred here from Part IX of the Canada Shipping Act, allows shipowners to limit the amount of their financial responsibility for certain types of damages occurring in connection with the operation of a ship. It applies to all maritime claims and to all ships, including pleasure craft, with the notable exception of claims for oil pollution damage. These claims are dealt with separately in Part 6.

The limitation of liability for maritime claims has been recently modernized by Bill S-4, which amended the Canada Shipping Act and which was passed by Parliament in 1998. Thus, there are no new changes proposed in this legislation.

In Part 5 of the bill, honourable senators will find a regime of liability for the carriage of goods, transferred here from the Carriage of Goods by Water Act. This regime governs the liability of shipowners for damage to cargo. It was last revised in 1993 and was the subject of a recent review and a report to Parliament by the Minister of Transport in December 1999. No changes are proposed in this regime at the present time, except for the adoption of a new provision on Canadian jurisdiction, which will assist claimants to pursue in Canadian courts their recovery of damage to cargo.

Finally, in Part 6 honourable senators will find the regime of liability and compensation for pollution damage, which has also been transferred from Part XVI of the Canada Shipping Act. The principal objective of this regime is to establish rules on liability for pollution damage caused by tankers. The provisions of this regime are based primarily on international conventions that Canada adopted, along with about 41 other maritime nations.

These conventions include the 1992 protocols to the 1969 International Convention on Civil Liability for Oil Pollution Damage and the 1971 International Oil Pollution Fund Convention adopted under the auspices of the International Maritime Organization in London. Canada has been a party to these conventions since 1989.

This regime was also revised by Bill S-4 in 1998. Thus, no changes are proposed at this time, save for a clarification that is required to keep pace with modern technology in offshore oil exploration. I am referring to the development of floating storage units intended for use in oil exploration. Recent discussions at the International Oil Pollution Fund resulted in an agreement that these units will be covered for pollution damage by the 1971 International Oil Pollution Fund when they are carrying cargo from an offshore site to a port or terminal. Consequently, a new

provision has been added in this bill to make it clear that these units are also covered under this legislation in the same manner.

• (1530)

Honourable senators, this concludes my overview of the existing regimes that will be consolidated in the proposed marine liability legislation. I should also note, however, that there are other liability regimes on the horizon, notably those currently being developed in the International Maritime Organization, such as the proposed regime of liability for spills caused by ships' bunkers and a new protocol to the Athens Convention on Compulsory Insurance. The proposed marine liability legislation should serve us well in the future as a logical framework for these regimes, ensuring that they are not scattered all over the legislative map.

[Translation]

Before concluding, honourable senators, I should like to say that Transport Canada's consultations with the various industry groups also concerned the proposal to clarify existing legislation. I have the pleasure of announcing to you that industry stakeholders are pleased with this initiative, which would bring the provisions on marine liability within a single framework.

[English]

In summary, the key features of the proposed marine liability legislation include a new regime of shipowners' liability to passengers, a new regime for apportionment of liability, and consolidation of existing liability regimes.

Honourable senators, the intent of this bill is to modernize our legislation to ensure that it meets current Canadian requirements in the area of shipowners' liabilities, in particular passenger liability. I hope you will all join me in giving thorough and expeditious consideration to this important initiative.

**Hon. W. David Angus:** Honourable senators, will the Honourable Senator Furey entertain a question?

**Senator Furey:** Yes.

**Senator Angus:** Senator Furey indicated that the technical nature of this bill might obviate any questioning today. However, I knew that Senator Furey would like an opportunity to answer one question. Can he explain how this bill will help the Port of St. John's or the Port of Halifax or both?

**Senator Furey:** The gist of the bill, honourable senators, is to ensure that shipowners are aware of the liability for the carriage of passengers and cargo. At present, most shipowners opt out of the liability issue in Canada, which they cannot do in France, the United States and Great Britain. Since sea-going traffic has increased enormously over the past several years, including cruise ships and ferry services, this type of liability is an assurance for people who travel by water that, should something happen, they will not need to rely on the old common-law rules and that suitable damage funds will be set aside to compensate them.

On motion of Senator Angus, debate adjourned.

## SIR JOHN A. MACDONALD DAY BILL

### SECOND READING—ORDER STANDS

On the Order:

Resuming debate on the motion of the Honourable Senator Grimard, seconded by the Honourable Senator Atkins, for the second reading of Bill S-16, respecting Sir John A. Macdonald Day.—(*Honourable Senator Hays*).

**Hon. Dan Hays (Deputy Leader of Government):** Honourable senators, I should like this bill to stand. However, I should like it to stand, with leave, in the name of Senator Grafstein.

**The Hon. the Speaker:** Is it agreed, honourable senators, that this order stand in the name of the Honourable Senator Grafstein?

**Hon. Senators:** Agreed.

Order stands.

## CRIMINAL CODE

### BILL TO AMEND—THIRD READING

**Hon. Wilfred P. Moore** moved third reading of Bill C-202, to amend the Criminal Code (flight).

Motion agreed to and bill read third time and passed.

## CRIMINAL CODE

### CORRECTIONS AND CONDITIONAL RELEASE ACT

### BILL TO AMEND—SECOND READING—DEBATE ADJOURNED

On the Order:

Resuming debate on the motion of the Honourable Senator Cools, seconded by the Honourable Senator Watt, for the second reading of Bill C-247, to amend the Criminal Code and the Corrections and Conditional Release Act (cumulative sentences).—(*Honourable Senator Carstairs*).

**Hon. Sharon Carstairs:** Honourable senators, I rise to speak to you today on Bill C-247. I wish to make it clear from the outset that I do not support the principle of this bill. Having said

that, it has had a colourful history in the other place and was severely amended at report stage. Therefore, I believe that after debate it should be sent to committee for further study, if for no other reason than to ensure that the bill receives appropriate sober second thought.

My concerns with the bill are threefold. First, I believe this bill is unconstitutional. Second, I believe that it is regressive and contrary to accepted penal practice. Third, I believe that it is a purely reactive measure and not one that meets the test of sober second thought.

Honourable senators, Bill C-247 asks us to change the eligibility rules for parole from a maximum of 25 years, in the case of a first-degree murder conviction, to a maximum of 50 years, if the convicted person is guilty of more than one murder.

This eligibility provision came into effect when we did away with capital punishment. A sentence for first-degree murder is not a sentence of 25 years, as many Canadians think. The sentence is for life, as is the sentence for second-degree murder, although in this case the eligibility for parole is set at 10 years, while for first-degree murder it is set at 25.

Does this mean that the convicted person automatically gets parole at 10 years or 25 years? No. The sentence is for life. Only when the parole board is convinced that the convicted person will not commit a similar crime or, indeed, any crime is the person released on parole. Any violation of the parole conditions, which includes the commission of any further crime, but can, and often does, include other conditions such as remaining free of drugs, results in a revocation of parole and the convicted person is sent back to prison to complete their life sentence.

Is there anyone in this chamber who seriously believes that a Clifford Olson or a Paul Bernardo will be granted a parole at any time during their lifetime? The heinous nature of their crimes will come before the Parole Board each and every time they ask for parole. In my opinion, they will simply fail to meet the test of reasonable grounds for release.

• (1540)

Honourable senators, the Supreme Court of Canada has ruled that the possibility of parole is essential to the constitutional validity of an indeterminate sentence. A life sentence is simply that — an indeterminate sentence. The Supreme Court of Canada upheld the constitutionality of the 25-year eligibility rule because it represented a significant portion, but for the most part not the majority, of a person's life. When that term is raised to 50 years, I am convinced, based on judgments such as *Warden of Mountain Institution v. Theodore Steele* and *R. v. Lyons*, that the Supreme Court would rule that Bill C-247 is contrary to the cruel and unusual punishment provision in section 12 of the Charter of Rights and Freedoms and, therefore, unconstitutional. After all, the Supreme Court held that the faint hope clause, which allowed a convicted person to apply to have the eligibility provisions changed after having served 15 years, was a significant aspect of the legality of the 25-year period for ineligibility.



The parole eligibility provision in the Criminal Code is intended to do two things: First, it is to fulfil our belief that the correctional system has two purposes. The first purpose is to punish for the crime, the second purpose is to rehabilitate. I will agree that some criminals will never be rehabilitated, but surely it is the role of the Parole Board to determine, on the basis of evidence presented to them, whether the individual has or has not the ability to live in society crime-free. It is most interesting to me that in evidence presented to the Standing Senate Committee on Legal and Constitutional Affairs, in our review to tighten the provisions on the faint hope clause, not a single convicted murderer released under this clause had committed a similar offence.

The other important aspect of parole eligibility is to give some hope to the inmates in our institutions that they will be ultimately released — no guarantee, mind you, since the sentence is for life, but some hope. I would suggest, honourable senators, that this hope makes our penal institutions less violent places. If the inmates behave, if they take their required counselling and courses, then perhaps they can become eligible for parole. If we raise that barrier to 50 years, then I would suggest to you that the phrase, "All hope abandon, ye who enter here," founded in the *Inferno*, will become applicable to our penal institutions, and that, in my view, does not meet the philosophy of our corrections system.

Another provision of the bill would impose a presumption of consecutive sentences on the perpetrator of sexual offences. At first glance, I must say that this appealed to me. I was, as many of you know, a victim of numerous sexual assaults performed by the same person when I was a child. However, the aspect that caused me concern is the placement of the burden of proof. The burden is placed not on the Crown but on the convicted person. The Supreme Court of Canada ruled in *Gardiner*, in 1982, that it is the Crown that must prove aggravating factors.

Honourable senators, all convicted persons and, indeed, all persons charged with offences must be treated equally. Our criminal justice system is based on the principle that the burden of proof rests with the Crown and not with the individual. It is for that reason that we develop expertise in our Crown prosecutors. We all know that those who are well off in this country hire the very best for their legal defences, whereas those who are poor, disadvantaged or, God help them, aboriginal end up with whomever the state can persuade to take the case. Legal aid lawyers are underpaid and usually overworked — at least the ones I have met. Rarely do senior lawyers take these cases. This is why fairness demands that the Crown and only the Crown have the burden of proof. This move towards reverse onus, found more and more in our legislation, is deeply disturbing to me.

Honourable senators, Bill C-247 relies on the emotional reaction each and every one of us has when we hear of the heinous crimes perpetrated by a Paul Bernardo or a Clifford Olson. Bill C-247 pretends that the sentencing system in force and effect in Canada today is too lenient.

Let me remind honourable senators that Canada has one of the toughest murder penalty structures in Western democracies. The parole ineligibility period for first degree murder is a mandatory 25 years versus an average of 9.5 years in a survey of 15 other Western countries. Furthermore, the average custodial time served in Canada for murder is 28.4 years versus 14.3 years in those same other countries.

If the statistics indicated that our offenders, when released, were less likely to offend than their counterparts in other Western countries, then perhaps there would be value to this legislation. However, that is not the case. Keeping offenders in prison for longer periods of time actually has the opposite effect — there is less chance of their successful rehabilitation.

Honourable senators, I also question the need for Bill C-247, given the changes to the Criminal Code in 1996 regarding high-risk offenders. With the existing dangerous offender and long-term offender provisions under the Criminal Code, a judge may already exercise sentencing options that treat the repeat offender much more seriously. Also, the changes to the faint hope provision in 1997 eliminated judicial review of parole eligibility automatically for those who kill a second time.

Honourable senators, this is not a good bill. I must say that, when I began to do the research on this bill, I thought often of the late Senator Earl Hastings. All I could do was imagine how much he would have despised this piece of legislation. I urge each and every one of you to give very serious consideration to this initiative. It is not a bill that meets the test of a good criminal justice system.

**Hon. Noël A. Kinsella (Deputy Leader of the Opposition):** Honourable senators, I wonder if the honourable senator would take a couple of questions.

**Senator Carstairs:** Yes.

**Senator Kinsella:** That was an excellent address, well researched and very informative. I was focusing at the beginning on the honourable senator's observation that she found nothing in the bill in terms of its principle that she could support. As I listened to her argument, it seemed to me that she found nothing in the substance of the bill that she could support.

I am somewhat confused — and perhaps the Honourable Senator Carstairs can clear up the confusion — as to why she then said that the bill should go to committee.

**Senator Carstairs:** The bill should go to committee in my opinion, because this is not the first incarnation of this particular piece of legislation. What I would like to see come out of the committee are some clear and logical reasons as to why this bill should never be introduced again. In the past, the Standing Senate Committee on Legal and Constitutional Affairs, to which I hope this bill will ultimately be referred, has been very outspoken regarding bills they believed to be weak in context and has written reports aimed at preventing the resurrection of similar bills.



**Hon. John Lynch-Staunton (Leader of the Opposition):** Honourable senators, I have a question for Senator Carstairs. I was struck by the statistic that the average time spent by a murderer in a Canadian jail is two or three times longer than that spent in jails in 12 or 15 other countries. Is that correct?

**Senator Carstairs:** Yes.

**Senator Lynch-Staunton:** Do any of those other countries have capital punishment?

**Senator Cools:** That would cut out a lot.

**Senator Lynch-Staunton:** If so, that might take the average down a bit.

**Senator Carstairs:** I do not have that information at hand, but I will write to the honourable senator when I review that particular study. My instinct is that those countries do not have capital punishment, because we were comparing similar situations.

**Senator Lynch-Staunton:** Thank you.

**Hon. Anne C. Cools:** Would the Honourable Senator Carstairs take another question?

**Senator Carstairs:** Yes.

**Senator Cools:** Senator Carstairs, in her remarks, said that she objected to the principles of the bill. Could the honourable senator tell us what those principles are?

**Senator Carstairs:** The principle of the bill, as I understand the bill, is to make it possible for criminals to have their eligibility provision raised from a maximum of 25 years to a maximum of 50 years if they are guilty of more than one offence, or, if their eligibility was only 10 years, it could be raised to 50 years.

**Senator Cools:** I would ask the honourable senator if I would be correct, then, in saying that what she has just described is not the principle of the bill but, rather, the pith and substance of the bill?

Perhaps I could ask the honourable senator another question. Does Senator Carstairs believe that people who viciously and malevolently kill five or ten human beings should spend the same amount of time in prison as those who only kill one? In other words, do people who commit more vicious crimes not deserve to spend longer in prison?

• (1550)

**Senator Carstairs:** Honourable senators, I think that the Parole Board makes those kinds of judgments each and every time a person with a long criminal record comes before it. The parole eligibility rule of 25 years is simply that: It is an eligibility rule. It is not a guarantee that parole will be granted. Therefore, I

see no reason why a parole board, sitting in judgment of a criminal who has committed more than one offence, would not say under these circumstances, even after 25 years, that the person in question is not eligible for parole. In addition, the dangerous offender legislation might well be applied to an individual who had committed more than one murder.

**Senator Cools:** In answering my question, the honourable senator responded to the issue of clemency and how parole boards should or should not grant parole based on the legislation that is put before them. However, my understanding is that Bill C-247 is speaking to the issue of sentencing. Essentially, the bill is saying that people who do bad things and worse things simply should stay in prison longer than others. Is that not correct?

**Senator Carstairs:** Honourable senators, I do not think it is possible to remain in prison longer than life. When a person is convicted of first- or second-degree murder in Canada, that person is sentenced to life.

**Hon. John G. Bryden:** Would the Honourable Senator Carstairs entertain a question from me as well?

**Senator Carstairs:** Yes.

**Senator Bryden:** I believe the honourable senator made reference, in passing, to the way this bill came through the other place and the various configurations that the bill has had. I do not know if the term "colourful" was used. Was the honourable senator aware in her investigation, first, that, when the bill that was introduced in the House of Commons was before the House of Commons Standing Committee on Justice and Human Rights on clause-by-clause study each clause was defeated unanimously and that the bill as a whole was defeated unanimously by the committee?

The other point is that if one looks at the bill that was considered in the House of Commons, at first and second reading and in committee, and if one looks at the bill that was cobbled together at report stage and is now before us, they are absolutely two totally different bills. One bill was considered by the House of Commons committee and rejected. This bill was not rejected and is now before the Senate.

**Senator Carstairs:** I would inform the honourable senator that I was aware of that, which is why I referred to the "colourful history" in the other place. It is also one of the reasons that, despite the fact that I do not agree with the principle of the bill and disagree with my honourable colleague as to what the principle is, in essence, I believe this new bill, because it is a new bill, needs to be exposed to committee study.

This is an entirely new bill. It has been cobbled together, as Senator Bryden said, in the other place. This bill deserves thorough study. I want the bill to get that thorough study, but I also want to be clear that I find the bill quite offensive.

On motion of Senator Bryden, debate adjourned.

*[Translation]***TRANSPORT AND COMMUNICATIONS**COMMITTEE AUTHORIZED TO STUDY STATE  
OF TRANSPORTATION SAFETY AND SECURITY

**Hon. Lise Bacon**, pursuant to notice given March 2, 2000, moved:

That the Standing Senate Committee on Transport and Communications be authorized to examine and make recommendations upon the state of transportation safety and security in Canada and to complete a comparative review of technical issues and legal and regulatory structures with a view to ensuring that transportation safety and security in Canada are of such high quality as to meet the needs of Canada and Canadians in the twenty-first century;

That the papers and evidence received and taken on the subject and the work accomplished by the Special Senate Committee on Transportation Safety and Security during the First Session of the Thirty-sixth Parliament be referred to the Committee; and

That the Committee submit its final report no later than December 31, 2000.

Motion agreed to.

*[English]***ADJOURNMENT**

Leave having been given to revert to Government Notices of Motions:

**Hon. Dan Hays (Deputy Leader of the Government)**, with leave of the Senate and notwithstanding rule 58(1)(h), moved:

That when the Senate adjourns today, it do stand adjourned until tomorrow, Wednesday, March 22, 2000, at 1:30 p.m.;

That at 3:30 p.m. tomorrow, if the business of the Senate has not been completed, the Speaker shall interrupt the proceedings to adjourn the Senate;

That should a division be deferred until 5:30 p.m. tomorrow, the Speaker shall interrupt the proceedings at 3:30 p.m. to suspend the sitting until 5:30 p.m. for the taking of the deferred division; and

That all matters on the Orders of the Day and on the Notice Paper, which have not been reached, shall retain their position.

Motion agreed to.

The Senate adjourned until Wednesday, March 22, 2000, at 1:30 p.m.





# CONTENTS

Tuesday, March 21, 2000

PAGE

PAGE

## SENATORS' STATEMENTS

### Canadian Interuniversity Athletic Union Basketball Championships

Congratulations to St. Francis Xavier University.  
Senator Graham ..... 773

### International Women's Day

Senator Pépin ..... 773

### North Atlantic Treaty Organization

First Anniversary of Intervention in Kosovo.  
Senator Forrestall ..... 774

### La Francophonie Week

Senator Losier-Cool ..... 774

### Economic Development Edmonton

Senator Roche ..... 775

### International Day for the Elimination of Racial Discrimination

Tribute to Dr. Feng Shan Ho. Senator Poy ..... 776  
Senator Hays ..... 776

### The Late Sandra Schmirler

Tribute. Senator Andreychuk ..... 776

### International Day for the Elimination of Racial Discrimination

Senator Maheu ..... 777

### Pages Exchange Program with House of Commons

The Hon. the Speaker ..... 777

## ROUTINE PROCEEDINGS

### National Defence Act (Bill S-18)

Bill to Amend—First Reading. Senator Hays ..... 777

### Canada Business Corporations Act Canada Cooperatives Act (Bill S-19)

Bill to Amend—First Reading. Senator Hays ..... 777

### Bill to Give Effect to the Requirement for Clarity as Set Out in the Opinion of the Supreme Court of Canada in the Quebec Secession Reference (Bill C-20)

First Reading. .... 778

### Canadian NATO Parliamentary Association

Report of Delegation to Defence and Security Committee  
Meetings Held in United States Tabled. Senator Rompkey ... 778

### Review of Non-proliferation Treaty

Notice of Motion to Urge Nuclear Weapon States to Reaffirm  
Commitment. Senator Roche ..... 778

### Sudan

Notice of Inquiry. Senator Wilson ..... 778

## QUESTION PERIOD

### Agriculture and Agri-Food

Farm Crisis in Prairie Provinces— Flooding Problem in Manitoba  
and Saskatchewan—Request for Response.  
Senator Stratton ..... 778  
Senator Boudreau ..... 778  
Possibility of Long-Term Solutions. Senator Stratton ..... 779  
Senator Boudreau ..... 779

### The Senate

Possibility of Special Committee to Study Clarity Bill.  
Senator Prud'homme ..... 779  
Senator Boudreau ..... 779

### Environment

Residency Requirement for Job Applicants. Senator Atkins .... 780  
Senator Boudreau ..... 780

### Transport

Port of Halifax—Competitive Situation in Attracting  
Large Container Ships—Possibility of Raising Bond Issues.  
Senator Forrestall ..... 780  
Senator Boudreau ..... 780  
Navy Island Cove, Nova Scotia—Possible Development  
of Site for Large Container Ships. Senator Forrestall ..... 781  
Senator Boudreau ..... 781

### VIA Rail

Improvement in Passenger Service. Senator Eyton ..... 781  
Senator Boudreau ..... 781

### Human Resources Development

Job Creation Programs—Possible Mismanagement of Funds—  
Request for Apology. Senator Angus ..... 782  
Senator Boudreau ..... 782  
Job Creation Programs—Possible Mismanagement of Funds—  
Request for Statistics on Jobs Created. Senator Angus ..... 782  
Senator Boudreau ..... 782

### Delayed Answers to Oral Questions

Senator Hays ..... 783

### Foreign Affairs

Civil War in Sudan—Human Rights Violations.  
Question by Senator Kinsella ..... 783  
Senator Hays (Delayed Answer) ..... 783

### Budget 2000

Long-Term Benefits to Taxpayers.  
Question by Senator Tkachuk.  
Senator Hays (Delayed Answer) ..... 783

**ORDERS OF THE DAY****Marine Liability Bill (Bill S-17)**

Second Reading—Debate Adjourned. Senator Furey .....	783
Senator Angus .....	785

**Sir John A. Macdonald Day Bill (Bill S-16)**

Second Reading—Order Stands. Senator Hays .....	786
---	-----

**Criminal Code**

Bill to Amend—Third Reading. Senator Moore .....	786
--	-----

**Criminal Code****Corrections and Conditional Release Act (Bill C-247)**

Bill to Amend—Second Reading—Debate Adjourned.	
--	--

Senator Carstairs .....	78
Senator Kinsella .....	78
Senator Lynch-Staunton .....	78
Senator Cools .....	78
Senator Bryden .....	78

**Transport and Communications**

Committee Authorized to Study State of Transportation Safety and Security. Senator Bacon .....	78
---	----

**Adjournment**

Senator Hays .....	78
--------------------	----







*If undelivered, return COVER ONLY to:*  
Public Works and Government Services Canada —  
Publishing  
45 Sacré-Coeur Boulevard,  
Hull, Québec, Canada K1A 0S9



CANADA

# Debates of the Senate

2nd SESSION

•

36th PARLIAMENT

•

VOLUME 138

•

NUMBER 37

OFFICIAL REPORT  
(HANSARD)

Wednesday, March 22, 2000

—

THE HONOURABLE GILDAS L. MOLGAT  
SPEAKER



## CONTENTS

(Daily index of proceedings appears at back of this issue.)

---

*Debates:* Chambers Building, Room 943, Tel. 996-0193

Published by the Senate

Available from Canada Communication Group — Publishing, Public Works and  
Government Services Canada, Ottawa K1A 0S9,

Also available on the Internet: <http://www.parl.gc.ca>





## THE SENATE

Wednesday, March 22, 2000

The Senate met at 1:30 p.m., the Speaker in the Chair.

Prayers.

### SENATORS' STATEMENTS

#### THE LATE HONOURABLE MICHAEL STARR, P.C.

##### TRIBUTES

**Hon. A. Raynell Andreychuk:** Honourable senators, I wish to note the death last week of Mr. Michael Starchevsky, known to most Canadians as Mr. Michael Starr. Mr. Starr was born on November 14, 1910, in Copper Cliff, Ontario, near Sudbury.

Like many Canadians of Ukrainian descent in that generation and many generations thereafter, Mr. Starr claimed Ukrainian as his first language before entering school, both parents having come from Ukraine. He started his working life as a clerk in Oshawa and married Anne Zaritsky in 1933. In Oshawa, he was an alderman from 1944 to 1949 and mayor from 1949 to 1952.

Also in 1952, he entered federal politics as a Progressive Conservative member from the Oshawa constituency, which he represented until 1968. He was Minister of Labour from 1958 until 1963 in the John Diefenbaker administration.

Having first served as house leader from 1965 to 1968, he went on to contest the B.C. party leadership in 1967, although unsuccessfully. In 1968, having been defeated in the general election, he went on to serve as a citizenship court judge until 1972 and then as Chairman of the Ontario Workers' Compensation Board from 1973 to 1980.

Mr. Starr is remembered for his work in furthering the cause of ethnic groups and minorities. He helped to build the policy of old age pensions for the Conservative Party. He worked to make the national employment service more humane in its approach to the unemployed and, in his tenure as minister, extended unemployment insurance benefits to women and seasonal workers, and extended federal financial assistance to the provinces under the vocational training coordination act.

• (1340)

While his record of fairness and commitment to public service would be the pride of any parliamentarian, he is best remembered by me and many Canadians of Ukrainian descent as the first Canadian cabinet minister of Ukrainian descent. Prior to his appointment, Canadians of Ukrainian descent had entered Parliament, but it was Mr. Starr's appointment by

Mr. Diefenbaker that created the breakthrough for Ukrainian Canadians, and that appointment was received with much pride in the Ukrainian community. For his achievement, Mr. Starr was named Ukrainian of the Year for North America in 1957 and went on to receive other awards in the community for his continuous work on behalf of the multicultural community and for his dedication to fairness and opportunity for all, irrespective of ethnic background.

While Mr. Starr's record of achievement is long, it was not without difficulty that he gained this important milestone. His career in public office often started with attempts and defeats, whether as an alderman, a mayor or a parliamentarian. It was this perseverance on behalf of minorities that is often pointed to as being the reason for his entering the race in 1967. He continued to persist and show that, through persistence, the legitimization of the multicultural and pluralistic society to which we subscribe can be changed from words into actions. For those in this chamber who believe that this may be overstating the situation, I quote from *The Globe and Mail* obituary of March 21 of this year, where it stated:

His handicaps included his inability to make a good speech and the trace of a Ukrainian accent.

It is therefore regrettable to note that the campaign Michael Starr started on behalf of the multicultural community, and in particular the Ukrainian community, is far from achieved. It is reassuring, however, that his legacy is an example to others. To truly make Canada a country of equal opportunity and acceptance for all Canadians, his legacy must continue.

Honourable senators, Michael Starr's daughter and grandchildren should be rightly proud of his heritage, his accomplishments and his place in the developments of Canada. I extend my condolences to his family.

**Hon. J. Michael Forrestall:** Honourable senators, I will add just a few words to those of my colleague Senator Andreychuk with respect to the passing of the Honourable Michael Starr, member of the Privy Council for Canada.

I served in the House of Commons with Mr. Starr. Indeed, he was one of the first people I met when I came to this venerable institution. As has been said, perhaps he had a trace of Ukrainian accent and perhaps he did not make the most fiery speeches. However, we had some great stand-up orators in those days. I think of Joe Greene. I remember Joe Greene listening to Michael Starr, and that is the point I want to make. Michael Starr's relationship to his colleagues was fair, firm and always giving. He was always ready to discuss. He never presumed that he had the answer to everything.

If one looks back at Michael Starr's life history in cabinet and in the Parliament of Canada, one will find that the work he did in the field of labour remains a monument and a useful source of reference for those trying to work their way through labour law.

To list Mike's activities would be difficult. I assure honourable senators that there are those who will remember him well. The labour movement in this country owes much to him. He was a good man, kind and thoughtful. Above all, he was most fair in the sense that he listened. He never presumed until the evidence was all in. Now he is with God. Grant him peace.

### INTERNATIONAL DAY FOR THE ELIMINATION OF RACIAL DISCRIMINATION

**Hon. Donald H. Oliver:** Honourable senators, I rise on the day after the International Day for the Elimination of Racial Discrimination to pay tribute to the young people of Canada who made this anti-racism campaign a success from coast to coast. As you know, this day is observed annually on March 21 to commemorate the 69 anti-apartheid protesters who were killed in Sharpeville, South Africa, when police opened fire on their peaceful demonstration in 1960. Now, some 40 years after that brutal massacre, March 21 has become a day of celebration and learning. It is a time when people around the world are asked to remember the fundamental values that support the elimination of racism: respect, equality and diversity.

In Canada, this initiative has received strong support. Throughout the 11 years since its launch on March 21, 1989, the "Racism. Stop it!" campaign continues to gain momentum and recognition in this country, and Canadian youth are at the heart of it all.

Our young people know that racial discrimination exists and are ready to take action against it. This week, in universities, schools and communities across Canada, there are concerts, displays, films, lectures, marathons and information booths all focused on raising awareness about the existence of racial discrimination.

I was not in the chamber yesterday to speak on this matter because I spent the day with 286 students in Grades 6, 7 and 8 at the Rothesay Park School in Rothesay, New Brunswick. I spoke about the evils of ethnic stereotyping and racism at their assembly, and later in the day I met with four different classes to discuss what the assembly meant to them.

This event was the culmination of an anti-racist program developed by 12 student peer helpers from that school. I met with the peer helpers, and I am pleased to tell honourable senators that they are a remarkable group of young Canadians. Their anti-racist program evolved from a discussion in which several students shared their personal experiences with racism. They were not satisfied with simply talking about the problem, so the group, with the help of their teacher, Mr. Carl Wolpin, decided to take action. They made it their mission to raise awareness and spark discussion among their fellow students by designing and teaching a series of classes and workshops about racism and the Canadian Charter of Rights and Freedoms.

In conclusion, honourable senators, I am proud to see the positive and sincere efforts being made at Rothesay Park School to promote peace and respect for cultural diversity. The work of those students and of the hundreds of young Canadians involved in this campaign encourages me to believe that in Canada we can one day transcend the scourge of racism.

### THE HONOURABLE LANDON PEARSON

#### TRIBUTE

**Hon. John G. Bryden:** Honourable senators, I rise to bring to your attention my seatmate.

**Senator St. Germain:** Is she running for the leadership of the party?

**Senator Bryden:** Senator Pearson is one of the most respected senators in this chamber. She has gained that respect in many ways, one of which is her tremendous devotion to the young people of Canada, to the youth of the world and in particular to young females.

I think it is fitting that I should be given the opportunity on her behalf to welcome to our chamber her two granddaughters, Maija and Micka, who are sitting in the gallery with their father, Michael Pearson, who is named after a very famous grandfather.

• (1350)

### VISITORS IN THE GALLERY

**The Hon. the Speaker:** Honourable senators, I should like to draw your attention to a distinguished delegation in our gallery. It is a delegation of parliamentarians from the United Kingdom, led by Baroness Pitkeathley. They are accompanied on this occasion by His Excellency Sir Anthony M. Goodenough, High Commissioner for the United Kingdom of Great Britain and Northern Ireland.

On behalf of all honourable senators, I wish you welcome here in the Senate of Canada. May you find some resemblance to your own chambers in the United Kingdom.

## ROUTINE PROCEEDINGS

### ABORIGINAL PEOPLES

#### COMMITTEE AUTHORIZED TO MEET DURING SITTING OF THE SENATE

**Hon. Jack Austin,** with leave of the Senate and notwithstanding rule 58(1)(a), moved:

That the Standing Committee on Aboriginal Peoples have the power to sit at 2:00 p.m. tomorrow, Thursday, March 23, 2000, even though the Senate may then be sitting, and that rule 95(4) be suspended in relation thereto.



**The Hon. the Speaker:** Is it your pleasure, honourable senators, to adopt the motion?

**Hon. Senators:** Agreed.

Motion agreed to.

## QUESTION PERIOD

### TRANSPORT

#### RAIL SAFETY

**Hon. J. Michael Forrestall:** Honourable senators, my question is directed to the Leader of the Government in the Senate, and it concerns rail safety.

We know of the many thousands of kilometres of rail line in this country that lack modern, updated signalling equipment. We have had two recent accidents in what they call "dark territory" — that is, lines where there is inadequate or, in some cases, no signalling whatsoever. One occurred in Thamesville, and resulted in a loss of life; and one occurred in the Miramichi, in New Brunswick.

According to the United Transportation Union and its officials, we are facing another Mississauga. What will the government do? We have had an announcement about the establishment of the commission of inquiry into safety measures — one of the longest titles for such a body that I have ever come across — but what will it do? This is a delaying tactic. It is at the very least amoral to permit passengers to travel on lines that are not properly signalled.

**Hon. J. Bernard Boudreau (Leader of the Government):** Honourable senators, I appreciate the honourable senator raising this subject and giving me this opportunity to respond to it. The government's intention is not to delay in dealing with this matter but, rather, to deal with it in a thoughtful and reasoned way. We expect that full information and details, along with recommendations, will be forwarded to the government. I can only indicate that I will express the honourable senator's concern in this area.

The matter of passenger rail service in Canada — and, I responded yesterday to another honourable senator who raised a similar question — is presently before the Minister of Transport. If we are to continue an acceptable level of service in the years to come, additional capital expenditures will be required.

**Senator Forrestall:** Honourable senators, the transportation union group has written to Minister Collenette asking him to establish a formal commission of inquiry, which I presume he intends to do, with all the authority and powers that attach to that. However, the minister has not yet replied to that request. I am not suggesting that the minister is ignoring it, but I am concerned about whether or not the government is giving active

consideration to the serious measure of a formal inquiry into rail lines.

**Senator Boudreau:** As the honourable senator stated, the suggestion has been placed before the Minister of Transport. Obviously, I am not in a position to give his response at this point in time. However, I can reassure all honourable senators that the entire issue of passenger rail service in this country is very much on the top of the minister's desk. Along with the specific request to which the honourable senator referred, I am sure the minister will be reviewing the entire subject of passenger rail service and the type of action required to ensure quality passenger train service in this country.

### VIA RAIL

#### POSSIBLE ANNOUNCEMENT ON RESTRUCTURING— REQUEST FOR INFORMATION

**Hon. Donald H. Oliver:** Honourable senators, while the honourable leader is talking about passenger service, I have a question for him respecting VIA Rail. The government keeps putting off an announcement on plans to restructure VIA Rail. There was supposed to have been an announcement last fall but it was put off when the Air Canada-Canadian Airlines matter came before the Minister of Transport. However, given the haste with which the government has moved to finance the capital spending of a certain foreign railway, could the Leader of the Government advise the Senate exactly when we can expect an announcement on passenger rail in this country?

**Hon. J. Bernard Boudreau (Leader of the Government):** Honourable senators, I can only reassure the honourable senator that the government considers this matter an extremely important issue for the country. In a country as large as Canada, passenger rail service is critical. The matter has been before the minister for some time. I can tell honourable senators that it is under active consideration as we speak. As to the exact timing of any announcement, I must leave that to the Minister of Transport. However, I am confident that policy will be brought forward in the very near future to address the concerns and issues raised by the honourable senator.

### EXPORT DEVELOPMENT CORPORATION

#### CHINA—INFLUENCE OF ENVIRONMENTAL POLICY IN GRANTING OF FUNDS TO THREE GORGES DAM PROJECT

**Hon. A. Raynell Andreychuk:** Honourable senators, in 1993 Mr. Chrétien was adamant that the environment must be the cornerstone of Canada's foreign policy. In fact, the famous Red Book said:

Canada must promote sustainable development around the world.

Under a Liberal government, environmental security through sustainable development will be a cornerstone of Canadian foreign policy.

• (1400)

In fact, the Liberal government went further in its response to the joint committee on foreign policy when it stated that global security includes the environment. If that is the case, could the Leader of the Government in the Senate explain why the Export Development Corporation was allowed to ignore this cornerstone in our foreign policy by committing and providing financing for the Three Gorges Dam in China, a project that is universally condemned for the environmental damage that it will cause?

**Hon. J. Bernard Boudreau (Leader of the Government):** Honourable senators, I do not have the details of that specific project before me. However, in point of fact, the Export Development Corporation has offered and continues to offer assistance to support the success of Canadian business abroad. As to its exact involvement in the project of which the honourable senator speaks, I am not completely familiar, but I can make further inquiries.

**Senator Andreychuk:** Honourable senators, the Three Gorges Dam is the biggest project undertaken in China, if not in the world, so I trust that the minister will look into the matter.

#### INFLUENCE OF HUMAN RIGHTS POLICY ON GRANTING OF FUNDS

**Hon. A. Raynell Andreychuk:** Honourable senators, I wish to go a bit further with this line of questioning. The Standing Senate Committee on Foreign Affairs indicated that there was a direct link between trade and human rights and that Canadians should not have their money, government money, used in such a way that it would adversely affect the lives or security of human beings on this planet. The Minister of Foreign Affairs has now made human security the premier plank in foreign policy. In light of that, why is the government not ensuring that the Export Development Corporation, which utilizes Canadian taxpayers' money, adhere to the values and standards that Canadians expect and that the Liberal government indicated it would follow?

**Hon. J. Bernard Boudreau (Leader of the Government):** Honourable senators, the values and goals that the honourable senator recites are fully supported by the Government of Canada and, insofar as possible, in all of its agencies, including the Export Development Corporation. Those directions, I am sure, are taken seriously by that body.

The primary focus of that agency, as I have said, is to assist Canadian businesses and industry in doing business around the world. The EDC has been very successful in offering assistance that has allowed Canadian businesses to participate successfully in all areas of the globe. At the same time, it does not require a further draw on the treasury of the Government of Canada. In fact, it has been operating within its own resources.

The Export Development Corporation, from that point of view, is to be commended. It remains the view of the Government of Canada that the principles enunciated should be taken into account by that agency.

## SOLICITOR GENERAL

### MIRAMICHI, NEW BRUNSWICK— POSSIBLE WITHDRAWAL OF GUN REGISTRY

**Hon. Noël A. Kinsella (Deputy Leader of the Opposition):** Honourable senators, my question is directed to the Leader of the Government in the Senate. Is the minister aware of reports circulating in the Miramichi area of New Brunswick to the effect that the gun registry office in Miramichi may be withdrawn because of the position of the member of Parliament from that region and the position taken in court by the Government of New Brunswick opposing the federal government's position on the matter?

**Hon. J. Bernard Boudreau (Leader of the Government):** Honourable senators, no, I am not aware of any such rumours in New Brunswick or elsewhere. I do not know that I can contribute anything else, except to say that I am confident that the Government of Canada does not make decisions to locate or remove facilities involved in the performance of a government responsibility based on the political persuasion of the local member of Parliament or of the provincial government. I know that the honourable senator shares that view with me.

## DELAYED ANSWERS TO ORAL QUESTIONS

**Hon. Dan Hays (Deputy Leader of the Government):** Honourable senators, I have a response to a question raised on February 22, 2000, by Senator Andreychuk, regarding the advice to companies seeking to do business in countries with human rights violations; a response to a question raised on February 29, 2000, by Senator Oliver regarding the budget, allocations for Nova Scotia and for research on the East Coast; a response to a question raised on March 1, 2000, by Senator Roche regarding the proposal to develop ballistic missile defence systems with the United States and a request for information in respect thereto; and a response to a question raised on March 2, 2000, by Senator Andreychuk regarding Cuba, efficacy of quiet diplomacy.

## FOREIGN AFFAIRS

### ADVICE TO COMPANIES SEEKING TO DO BUSINESS IN COUNTRIES WITH HUMAN RIGHTS VIOLATIONS

*(Response to question raised by Hon. A. Raynell Andreychuk on February 22, 2000)*

What advice has the Canadian government provided to companies prior to their entering volatile regions that could be detrimental to business operations?

- Officials of the Department of Foreign Affairs and International Trade familiarize companies with the Travel Advisory Report on the country in which the company would like to operate. The Department's trade officers can also provide information and advice.



- Foreign Affairs officials strongly recommend that companies contact the Canadian High Commissions/Embassies of their host country for advice before signing any business deals.
- The Department provides a general overview of both the political and economic conditions of the country a company wants to operate in.
- The Department provides advice on how to enter the market and how to stay in the market.

What advice did the Canadian government offer Talisman Energy prior to their entrance into Sudan?

- Department of Foreign Affairs and International Trade officials advised Talisman Energy not to do business in Sudan because of the various political security/economic risks involved.
- The Department briefed Talisman Energy on the risks involved in entering a country at civil war, including the human rights violations in the country, security risks for Canadians working in Sudan, et cetera.
- Talisman Energy were told they could be subject to intense scrutiny from human rights groups, church groups, et cetera, if they decided to operate in Sudan.
- Talisman Energy chose to operate in Sudan, despite the Department's cautions.

Do we give companies an indication of Canada's political position in particular countries, or do we merely provide corporate information?

- We provide both corporate and political information to companies.

In respect to China and Malaysia, as partners in the Greater Nile Petroleum Operating Company, what sort of dialogue has our government engaged with these two countries?

- Minister Axworthy wrote to both the Foreign Ministers of Malaysia and China to express his deep concern regarding the allegations of military use of the Heglig airstrip in Sudan.

## FISHERIES AND OCEANS

### THE BUDGET—ALLOCATIONS FOR NOVA SCOTIA AND FOR RESEARCH ON EAST COAST

*(Response to question raised by Hon. Donald H. Oliver on February 29, 2000)*

A substantial portion of the \$320 million will be spent in Atlantic Canada to address gaps in the marine safety system

through measures to restructure the Coast Guard's Search and Rescue capacity and to strengthen scientific advice and conservation and protection measures related to various fisheries. Details regarding specific allocations of funds will be available upon completion of the Department's business plans for 2000-01.

The budget includes almost \$40 million over three years to address gaps in the provision of timely and reliable scientific information and to improve the understanding and advice for the conservation and sustainable use of living aquatic resources and their environments. Specific initiatives include:

- increased ocean monitoring to track dynamic changes in the marine ecosystems and the consequences of these regime shifts on productivity of salmon, groundfish and invertebrate species;
- stock assessments for species and stocks of fisheries that have never been assessed and for which there are serious conservation concerns; and
- additional effort and resources to assess and monitor East Coast lobster stocks.

## NATIONAL DEFENCE

### PROPOSAL TO DEVELOP BALLISTIC MISSILE DEFENCE SYSTEM WITH UNITED STATES—REQUEST FOR INFORMATION

*(Response to question raised by Hon. Douglas Roche on March 1, 2000)*

To date, there have been no formal consultations with the U.S. government on the U.S. National Missile Defence program. On March 2, 2000, the Assistant Deputy Minister for Global and Security Policy made a presentation to the Standing Committee on Foreign Affairs and International Trade on this issue. His presentation is attached for information.

Presentation by Mr. Paul Heinbecker,  
Assistant Deputy Minister,  
Department of Foreign Affairs and International Trade to  
SCFAIT  
March 2, 2000

## NATIONAL MISSILE DEFENCE

### INTRODUCTION

Thank you for inviting me to participate in these hearings.

What I will present to you today are perceptions that strike me, as a senior official, to be significant.



I will not be speaking on behalf of the Government of Canada or indeed on behalf of the Minister of Foreign Affairs.

The most fundamental point is that the National Missile Defence program is a U.S. program, the United States has not yet decided to deploy it, and the U.S. Government has not officially invited Canada to participate.

The NMD program raises very large issues for Canada and endorsement of it would have very far-reaching consequences.

An eventual NMD decision would be taken by the government in light of a wide range of factors.

Before discussing some of those factors, it would perhaps be helpful for me to set out for those of you not fully conversant with it some of the what, why, where and when of NMD, as we see it.

### WHAT IS NMD?

Work has continued in the U.S. on ballistic missile defence since the end of the Star Wars program of the mid-eighties.

NMD would be based on earth — not in space — although space sensors would be used to detect and track missile launches.

A National Missile Defence system would launch, from the ground, an unarmed projectile called a “kill vehicle” that would intercept an incoming missile and destroy it by the sheer force of impact.

As currently planned, NMD would counter an attack by a limited number of missiles and warheads.

You are also aware of Theatre Missile Defence, or TMD.

The systems are akin to one another, but there are differences.

Theatre Missile Defence is intended for use, as its name implies, in theatre, to protect U.S. troops abroad and/or U.S. allies.

It complies with the 1997 revisions to the Anti-Ballistic Missile (ABM) Treaty, which has yet to be ratified.

BMD or Ballistic Missile Defence is a generic term that includes both TMD and NMD.

To avoid confusion, I will not use the term BMD.

### WHY IS THE U.S. DEVELOPING THIS SYSTEM?

Essentially, the proponents' argument is that the emerging threat caused by the proliferation of missile and weapons of mass destruction (WMD) technology is a new factor that the old bi-polar world no longer exists and that U.S. security is being undermined and the nature of international relations changed.

Two recent developments have added urgency to their thinking.

First, in 1998 the bi-partisan “Rumsfeld Report”, named after its chairman, former Secretary of Defence, Donald Rumsfeld, and mandated by Congress, concluded that the U.S. could face an ICBM threat from a “rogue” state in five years — much sooner than had been expected.

Second, in August 1998, North Korea launched a Taepo Dong 1 ballistic missile, capable potentially of hitting some areas in the U.S.

On January 20 last year, U.S. Secretary of Defence Cohen concurred that a threat exists, that it is growing and that it is expected soon to pose a threat not only to American troops overseas, but also to the U.S. itself.

A rogue state with an ICBM could limit American foreign policy options by blackmailing future American Governments.

In March 1999, bills calling for the deployment of a National Missile Defence system were approved in the Senate and the House by wide margins.

On July 23, 1999, President Clinton signed the National Missile Defence Act, which states that an NMD system will be deployed when technologically feasible.

He also set out criteria that would govern a deployment decision.

These are: whether the threat is materializing; the status of the technology; whether the system is affordable; and national security considerations, including arms control and disarmament regimes, relations with Russia and the impact of the decision on allies.

These are major considerations for the United States.

The deployment decision has not yet been taken and, as a matter of fact, might not be taken by this or even a succeeding administration.

## WHERE WOULD AN NMD SYSTEM BE LOCATED?

Current U.S. planning is for the initial deployment of 100 ground-based interceptor rockets at a single site in Alaska.

This number of interceptors would have the capability to address only a limited number of incoming warheads.

It could theoretically protect all of the U.S.A., including Hawaii, from that spot.

The U.S. apparently needs to use radar equipment located in other countries to track incoming missiles and to guide the interceptor.

None of these countries has as yet apparently assented to this use of its territory.

As currently envisioned, none of the NMD components, launchers or radars would be based on Canadian territory.

The U.S. does not appear to need Canadian territory to host any components of the NMD system.

There has been talk in Washington of a second phase, with greater capability and possibly an additional site for further interceptors.

## WHEN WOULD IT BE DEPLOYED?

When he signed the National Missile Defence Act into law last July, President Clinton stressed that a final decision to deploy an NMD system would take place only after a Deployment Readiness Review has been completed.

The target date for this Review is June.

Two of the initial three tests required before a deployment decision can be made have been completed.

The first test of the NMD "kill vehicle" was in October 1999.

While the kill vehicle successfully hit and destroyed the target missile, some doubts have been expressed about the full validity of the test.

The second test in January 2000 was not fully successful.

The guidance unit of the kill vehicle failed six seconds before the projected impact with the target causing the vehicle to miss.

It was, however, reportedly a very near-miss.

A further crucial test is now scheduled for May.

U.S. authorities have said that they need at least two successful tests for a decision to deploy.

There have been recent calls for the U.S. Administration to delay the deployment decision, primarily for technological reasons.

A Pentagon panel recommended in November 1999 that additional tests be conducted before a deployment decision is taken.

In January 2000, the Pentagon's director of operational testing and evaluation said that the Pentagon was facing undue pressure "to meet an artificial decision point in the development process" and that the current timetable disregards the enormous technical problems.

While a decision to deploy could be taken as early as June this year, it would, of course, be some years before any system could, in fact, be in position.

At this time, the earliest deployment possible — if all goes well technologically — is apparently 2005.

## NMD RAISES LARGE ISSUES

First and foremost, no national missile defence is permitted under the terms of the 1972 Anti-Ballistic Missile Treaty signed by Russia and the USA — hence, the discussions under way.

Under that Treaty, as amended in 1974, each side is allowed to protect either its capitol or an ICBM field, not both and not the national territory.

The Soviet Union chose Moscow and installed a system.

The U.S. chose Grand Forks, but has not installed a system.

The Treaty is intended to ensure that deterrence works.

Deterrence is based on mutual vulnerability; the premise is that, since each side can destroy the other, neither will try.

Underlying the ABM Treaty was the fear that if one side had an effective missile defence system, then it could launch nuclear weapons at the other side without fear of retaliation.

The thesis was that a national missile defence system would touch off a spiral of offensive weapons development to overcome the defences.

To sustain deterrence, the two sides agreed that neither side would have a capability to protect itself from the nuclear weapons of the other side.

Both sides agree that an NMD system would be inconsistent with the ABM Treaty.



The U.S. has engaged the Russians in discussions to amend the Treaty.

It is attempting to persuade the Russians both that the threat from rogue states is real and must be countered and that the size and character of the NMD system the U.S. would deploy against that threat would not undermine Russian deterrence.

The Russians accept that the proliferation of missile capability and weapons of mass destruction does create a new situation.

Indeed, they maintain they are potentially in greater danger than the United States is.

Nonetheless, they believe that a U.S. NMD system would eventually undermine Russian defence, that the threat from rogue states is not sufficient to jeopardize the 30 years of stability that they maintain the ABM Treaty has delivered, and that other methods can and should be used to counter that threat.

That is the nub of the diplomatic issue.

While Canada is not a party to the ABM Treaty, we do consider it to be a cornerstone of the international arms control and disarmament regime.

We are open to seeing the Treaty amended if the parties can agree.

But, we would obviously have reservations if one side were to abrogate the Treaty unilaterally.

Great circumspection is warranted when decisions could damage a system that has underpinned nuclear restraint and allowed for nuclear reductions.

#### **NMD, THE ABM TREATY, CANADA AND INTERNATIONAL RELATIONS**

It is worth reiterating at this point that the United States President has not yet decided to deploy an ABM system, that Canada has not been invited to participate as and when such a decision is made and that the Canadian Government has not accordingly decided whether it would participate.

We have, nonetheless, been following the development of this technology for some time.

In the 1994 Defence White Paper, the Government of Canada decided that Canada should cooperate with the United States in the development of missile warning

systems, as well as research and consultation on Theatre Missile Defence.

However, Canadian engagement was and is contingent upon this work complying with the ABM Treaty and other agreements and being cost effective and affordable.

It must also make an unambiguous contribution to Canadian defence needs and build upon missions already performed by the Canadian Forces, such as surveillance and communications.

A major factor to be weighed in the NMD debate is our relationship with the United States.

Obviously, we have an extensive, close and productive relationship with the United States across the entire range of bilateral and international affairs.

For this reason alone, no decision on NMD would be taken lightly.

There are several issues that would play in any eventual Cabinet decision to join an NMD program.

Among others, whether by doing so Canada would be more or less secure.

Whether and how such a decision could be expected to affect Canadian economic relations with the United States.

How such a decision would affect Canadian foreign policy — e.g., would we be more or less independent?

How much it would cost — the U.S. NMD program is costing annually something approaching our total defence budget.

How it would affect Canadian defence relations with the United States.

Some have argued, for example, that were we not to subscribe to NMD, NORAD would automatically atrophy.

Such an outcome does not strike me as preordained.

Certainly, if NMD was awarded to NORAD, changes would be required in the way NORAD works.

But a good argument can be made that were the ABM Treaty to be abrogated unilaterally, and should the Russia-U.S. relationship turn hostile again, NORAD and Canadian airspace would likely grow in significance.

The Government would take an NMD decision in light of decisions it would make on other security issues.



Terrorism, crime and drugs trafficking, cyber-defence and the protection of critical infrastructure are all changing the American defence posture and are all of interest to us, too.

Taken together and however Canada responds, they add up to a significant change in Canada-U.S. security relations.

Nor would the Government obviously make an NMD decision without weighing the merits of the arguments of the proponents and opponents, both, of the NMD system.

Do we share the Rumsfeld report's assessment of the threat as well as more recent ones such as the U.S. National Intelligence Estimates of 1999?

And is NMD the appropriate response?

For one thing, the Russians' nuclear weapons systems are real and sophisticated; any emerging rogue state's threat is much less immediate and capable.

For another, a good number of Americans, including former U.S. Under-Secretary of Defense, Joe Nye, now at Harvard, have argued that a ballistic missile attack by a rogue state is the least likely form of action against the United States.

There would be no doubt where the missile came from and not much doubt about the consequences for the perpetrator.

Perhaps more important, cruise missiles, unmanned aircraft launched from freighters, tramp steamers into the port of New York, the proverbial suitcase bomb and even made-in-the-U.S.A. bombs by terrorist groups seem more plausible near term threats.

There is currently little effective defence against any of these threats, beyond "intelligence cueing", i.e., warning by intelligence means.

The NMD program would offer little in this area.

Will NMD work?

My own view is that it would be unwise to bet against the technology eventually working, especially where money for it is no object and the sense of national vulnerability is deeply felt.

Is NMD going to be cost effective?

That depends on how the costs are calculated.

If Russia and the United States cannot reach agreement on amending the ABM Treaty, and if the United States

unilaterally abrogated the Treaty, there would be significant consequences.

The ABM Treaty has been a centrepiece of international strategic stability for thirty years.

This Treaty has been the key, first, to the Strategic Arms Limitation Agreements (SALT) and, more recently, the Strategic Arms Reduction Treaties (START).

It has permitted the "build-down" of missiles that we have witnessed in recent years.

START I saw a reduction to 6,000 deployed strategic warheads on both sides.

START II calls for a reduction to 3,500.

The United States has ratified START II; the Russians have not ratified START II, but have signalled their intention to do so in the Spring, following the Presidential election.

Once so ratified, Start III would follow and reduce strategic weapons on both sides possibly to as low as 1,500 each, but more likely 2,000-2,500.

For the first time, Start III would also address tactical nuclear weapons.

These treaties all depend on an assumption of stability in terms of the strategic nuclear balance.

All could be lost if the ABM Treaty were abrogated.

There would quite possibly be a knock-on effect for other arms control and related treaties, including crucially the Non-Proliferation Treaty (NPT), the Comprehensive Test Ban Treaty (CTBT) and the Fissile Material Cutoff Treaty under negotiation.

Whether strategic stability would endure in these conditions is not certain but seems unlikely.

The Russians apparently worry that NMD would progressively undermine their own strategic deterrent, that it would provide the basis for a U.S. "breakout" and make the United States invulnerable.

The system could have a significant impact on the current Chinese strategic nuclear deterrent.

Both Russia and China believe, as a minimum, that their own geostrategic positions would suffer vis-à-vis that of the United States, although neither, especially the Russians, can afford an arms race.

It is quite possible that new offensive arms programs could be triggered in Russia and in China and possibly by both, in cooperation with each other.

A potential alliance of Russian technology and growing Chinese prosperity would, nevertheless, be cause for considerable concern.

There would also be consequences if the ABM Treaty were unilaterally abrogated for our NATO allies.

If their vulnerability were to increase the Atlantic would, figuratively, widen further.

It is evident that the issues that a unilateral abrogation of the ABM Treaty would raise are significant and very far-reaching.

Further, as Henry Kissinger pointed out in a recent *Los Angeles Times* article, it does not take a degree in political science to see that there are better times than the middle of an election campaign to make a decision so fraught with potential consequences.

Talks between the United States and Russia continue.

United States negotiators are trying to persuade Russia that the ABM treaty can and should be changed, in ways that safeguard, indeed enhance, each others' security.

The Russians are trying to persuade the Americans that U.S. (and Russian) security can be better assured by other means.

The Russians are apparently making counter-proposals to that effect based in part on the unratified 1997 U.S.-Russia agreements on theatre missile defence and the ABM Treaty.

Both sides have told us that they remain hopeful that the other side will ultimately agree.

## CONCLUSION

The ABM Treaty is between the United States and Russia, but the strategic stability and arms reductions it has generated are everyone's business.

NMD appears to be on a fast track in the U.S.

But there remain some significant unknowns.

Will the technology work?

Or will it be, as one U.S. Senator described it, "a Maginot Line in the sky?"

If the rogue state threat does materialize, can it be adequately countered by other technical and diplomatic means?

Will the Russians ultimately acquiesce in an amendment to the heart of the ABM Treaty or will they continue to refuse?

If the Americans unilaterally abrogate the ABM Treaty, will they be able to maintain the strategic balance with Russia that has been critical to maintaining stability for so many years?

Will U.S. allies support unilateral abrogation if it comes to that?

These are all real and serious questions that remain to be answered.

It remains to be seen what the U.S. Administration will itself decide.

The question of Canadian participation remains open.

## FOREIGN AFFAIRS

### CUBA—EFFICACY OF QUIET DIPLOMACY

*(Response to question raised by Hon. A. Raynell Andreychuk on March 2, 2000)*

Is trade paramount to human rights in Canada's foreign policy toward Cuba?

- The Canadian government has established a policy of constructive engagement with Cuba. The 14-point Joint Declaration between Canada and Cuba encourages political reform and economic transition.
- We continue to believe that a balanced policy based on political dialogue, technical and policy cooperation, and active commercial links will accelerate the pace of change in Cuba.
- Canada neither encourages nor discourages companies from engaging in business in Cuba. Decisions are taken by individual firms for commercial reasons. Canada has long trading relations with the Caribbean. It is not surprising that many firms are present in that region's largest economy and third largest market. However, commercial objectives have not been pursued at the expense of advancing Canadian concerns about democracy, good governance and, in particular, human rights.



- The Canadian government has repeatedly underlined, at senior levels, our concerns with Cuba's ongoing repression of human rights, and especially the imprisonment of human rights activists.
- We have stressed the case of Cuba's four leading dissidents and reminded the Government of Cuba that provisions exist under Cuban law to grant immediate release to these individuals.
- Canada is also working hard to support the creation of practical space for non-governmental actors in Cuban society, including improved practices with regard to dissent. Canada provides moral support to constructive human rights and opposition leaders, assists with penal code reform and modernization of Cuba's judicial process, and encourages the unconditional release of political prisoners.
- It is simply not true that Canada no longer supports discussing Cuba in multilateral human rights fora. We are working with other governments to ensure that due attention to the deterioration of human rights observation in Cuba is addressed in appropriate international fora such as the UN Commission on Human Rights.
- Our leadership proved critical to securing passage of last year's UN resolution criticizing the negative trend in Cuba's human rights and good governance performance.
- We will be looking closely this year at any UN resolution that emerges on Cuba.

Will the government review its Cuba policy?

- In fact, the Prime Minister ordered a review of Canada's relations with Cuba in the aftermath of Cuba's new anti-dissident legislation and the imprisonment of the country's four leading political activists.
- The Spring 1999 review concluded that a constructive engagement approach remains the most appropriate tool for advancing Canadian interests in Cuba and that this policy has provided Canada with influence in Cuba and on Cuban issues internationally.
- However, the review did put in place new guidelines to refine our engagement in Cuba. All new initiatives, including ministerial visits, will be reviewed on a case-by-case basis to ensure that such activities support Canadian objectives of promoting economic and social change in Cuba. Established programs, particularly those falling under the Joint Declaration, will proceed, as will normal commercial relations.
- Because Canadian values are central to our foreign policy, there will likely continue to be differences in

this bilateral relationship, given the present Cuban political system.

- Should the Cuban regime signal a greater acceptance of international norms, Canada would be ready and willing to expand its engagement with Cuba.
- Over the long term, though, Canada feels certain that the best strategy is to continue engaging with Cuba to encourage political reform and economic transition while at the same time speaking openly to the Cuban government concerning its unacceptable human rights performance.

• (1410)

## ORDERS OF THE DAY

### THE BUDGET 2000

STATEMENT OF MINISTER OF FINANCE—  
INQUIRY—DEBATE ADJOURNED

**Hon. Erminie J. Cohen** rose pursuant to notice of Senator Lynch-Staunton on February 29, 2000:

That he will call the attention of the Senate to the Budget presented by the Minister of Finance in the House of Commons on February 28, 2000.

She said: Honourable senators, last spring and summer I had the honour to co-chair the Progressive Conservative Caucus Task Force on Poverty. We held 16 public meetings across Canada and heard from almost 250 people who represented, to name a few, food banks, soup kitchens, hostels, homeless shelters and church groups. As well, we heard from people who work on the front line in our communities, such as social workers, educators, public health people, police officers and, of course, Canadians who are marginalized and impoverished. What we heard validated what we knew intuitively, that poverty in Canada is worsening, and in spite of great economic growth and prosperity, there is a persistent and growing gap between the rich and the poor in Canada.

Commenting on our task force report, my local newspaper, in an editorial on January 26, wrote:

...some of the recommendations simply cry out for implementation. The Chrétien government would be wrong to ignore them because they are just...and they are above partisan consideration.

Our 41 recommendations, to be debated at a PC policy convention in May, are based on the testimonies we heard, and so, too, is this response to the recent budget.



Honourable senators, although the budget did offer some positive measures to provide relief for low- and middle-income families, it failed miserably in addressing the problems of poverty in Canada, offering Canadians no tools to lift themselves out of the poverty trap. The National Anti-Poverty Organization tells us that the gap between many of the poor and the rich was made even wider by the proportionately larger tax benefits to Canadians who are better off financially. We are well aware that in order to reduce the deficit, the federal government cut social spending and employed tax increases. NAPO went on to state that both measures burden low-income families severely, as the largest cuts to spending have been to welfare programs. Yet, this budget rewards higher income earners proportionately more and offers next to nothing in the reinvestment of social programs.

Last Friday, at his party's convention, and just a few weeks after he delivered the budget, the Minister of Finance talked about the need for government action to deal with the widening gap between rich and poor which the technology-driven new economy is creating. Pardon me? The gap he refers to began with the cancellation of the Canada Assistance Program plus the severe cutbacks to social programs initiated to finance the debt, all of which affected the lowest-income people, not the technology-driven new economy. However, the new economy will deal a death blow to young Canadians who do not have the resources to compete. Funds and initiatives must be made available to enable these students to pursue post-secondary education. We need equal opportunity here.

Josephine Grey, Director of Low Income Families Together, tells us that the,

...acceleration of the high-tech economy, for which many Canadians are ill prepared, combined with cuts to social programs such as employment insurance, mean that when people fall out of the mainstream now, they tend to stay down, if they ever come up at all.

A March 4 *Toronto Star* article stated that:

...as part of the war on the deficit, this government slashed unemployment insurance by \$5 billion and tightened eligibility requirements so that today only about 40 per cent of those out of work qualify for benefits.

The culprit, honourable senators, was Bill C-12, which was passed in 1996.

Our poverty report recommends, first, that the Employment Insurance intensity rule be repealed. It unfairly penalizes seasonal workers by reducing benefits to those who made a claim in the previous five years. Second, the report recommends that part-time workers with an overall income less than \$5,000 per year, many of whom are students and women, be relieved of the

burden of paying EI premiums. The third recommendation is that the federal government consult with Canadians on the entire act to seek solutions that will ensure that the EI program provides adequate income protection to Canadians in all regions in the event of job loss, while ensuring reasonable eligibility requirements.

Over the weekend, at his party's convention, the Prime Minister suggested that future changes may be made to Employment Insurance. His motivation, however, was skewed. The context in which he made the suggestion was for gaining seats in Atlantic Canada rather than helping the unemployed. Atlantic Canadians will not be fooled.

A positive move in the budget, and one that our report recommended, was restoring full indexation of the entire tax system, which will enhance the Canada Child Tax Benefit, the National Child Benefit, and the GST credit. This measure will provide cost savings to low-income families.

The extension of parental leave benefits under the employment program from six months to 12 months supports the values of parenting and early childhood development. I was pleased to note also that the child care expense deduction was increased from \$7,000 to \$10,000, but where are the promised programs in child care and in early childhood intervention and development?

The increase in the Canada Child Tax Benefit to \$1,975 by the year 2004 is a positive move, but why wait an additional year to begin to provide assistance to those families most in need? People in poverty need money in their pockets now.

I was disappointed that the budget made no mention of the unfair provincial clawbacks from families receiving social assistance. The government could have shown leadership here. After all, he who pays the piper calls the tune.

Our task force agreed with the testimony of witnesses that the threshold above which income tax becomes payable, that is, \$7,131, is much too low, as Canadians should not be expected to pay taxes on an amount that is not even sufficient to cover their basic expenses for food, clothing and shelter. We recommended the basic threshold be raised to \$10,000, ensuring that no income tax is payable on income below that amount.

As it stands now, honourable senators, the government expects that in four to five years the basic personal amount will rise to \$8,000. This year's increase in the basic personal amount will be \$100. Honourable senators, this actually works out to a federal tax saving of 33 cents a week; not a lot of money when you consider the higher costs of health care and child care and factor in the increase in heating and gasoline costs.

An economist from Nesbitt Burns commented that Canadian consumers spend 3 per cent of their after-tax income on gasoline and 6 per cent on energy. If current prices remain, the cost to consumers will be another .5 per cent of disposable income, almost offsetting the net impact of the first year tax cuts contained in the current federal budget.

Following are several excerpts from national newspapers that support these concerns. One mother of four, who lives in poverty, was actually apologetic for daring to counter the tax cut hike, but she described her view of the tax cuts clearly when she said:

You have to see the face of poverty. We're real people. There's nothing here for me and my family. I'm really sorry if this is uncomfortable for people. But I live in it every day.... You know we're going to turn out like New York, hiding the poor and hiding the homeless.

Molly Ladd-Taylor, a York University professor said:

The tax cut that I will get, as the group that is targeted the most, is small change compared to the money I'm going to have to pay out again as schools fall apart, as health care falls apart and in terms of child care.

Another mother of a family of four, whose income fits almost squarely in the middle income tax bracket, explained that her family will experience a savings of a modest \$450 in income taxes, an average of about \$20 a paycheque. When given the choice between saving this amount or spending more on health care, she stated that the last thing she wants is a \$450 tax break that will result in further cuts to health care and education. She wants these services in place for her children.

The truth is that income tax and health care spending are not mutually exclusive. Canadians do deserve a tax break, and they also deserve to see more spending in priority areas like health care and education. In fact, an Angus Reid poll pointed out that 72 per cent of Canadians feel that health care should be the top priority in the next five years. Education was the second top priority. This budget chose to ignore both. In this budget, for every \$1 in tax relief there is 2 cents of spending on health care.

While it is important to take the steps to help those disadvantaged in our society with short-term relief, it is more important to consider future hardships that may be brought on by lack of measures and a long-term strategy. The \$2.5-billion one-time extra funding to provinces for health and education in the next four years is totally inadequate. When you divide this among the programs and the provinces, it is not very much.

• (1420)

More important, the provinces are looking for more stable funding. The government has given extra funds to the provinces with no commitments. How do you manage a system when it is not known from year to year what funding will be available? It is

clear why the premiers from across the country are outraged and frustrated by Ottawa's snub to our medicare system. While health care costs rise, they are left with choices like spending cuts, obtaining more funds through user fees, or increasing the role of the private sector. This is what we are experiencing right now in Canada.

A study by the Atlantic Institute of Market Studies says that our medicare system in its present state is unsustainable. The Canadian Medical Association agrees that the \$2.5 billion is insufficient to deal with the growing crisis in medicare. An aging population and the growth of expensive medical technology are two areas that need to be addressed.

Post-secondary education institutions also felt the crunch in this budget. Sharing the \$2.5 billion will not do much for either post-secondary education or the health care system.

The Minister of Finance deliberately invited the provinces to spend this one-time payment, which will be spread out over four years, on both health and post-secondary education. In doing this, he effectively passed on a messy battle that will see health groups and post-secondary education groups vying for their share of the funds. As Robert Giroux, the President of the Association of Universities and Colleges of Canada, so aptly put it: "We will have to go after provincial governments for our fair share of the transfer." Honourable senators, it is no wonder the premiers are angry. The federal government is essentially pitting what Minister Martin himself called the "highest priorities of Canadians" against each other in the battle for funding.

While the measures put in place to give students with scholarships a break were a step in the right direction, they did not go far enough. Post-secondary education has seen cuts of approximately \$5 billion over the past six years. This year's budget does nothing to redress past cuts. The result will be increased tuition and higher student debt. We are allowing our future generations to begin their careers with massive debts and added stress. As mentioned earlier, where are the incentives in the programs to attract students from lower income groups to pursue post-secondary education?

A major disappointment in the budget was the government's failure to address the desperate shortage of affordable housing in Canada's cities. Instead, there was only a weak commitment by the federal government to work with other levels of government and private investors to improve municipal infrastructure. The modest \$500 million set aside for infrastructure will include everything from sewers to highways to houses.

There is no question that funding for infrastructure is needed. In cities across Canada, university buildings, bridges and roads are crumbling. However, these issues should not need to compete with the equally pressing issue of social housing. More often than not, it is the homeless and those with rents they cannot afford who lose out in the battle for infrastructure funding.



Honourable senators, it is hard to imagine that in 1990 the Liberal Caucus Task Force on Housing, co-chaired by the Minister of Finance himself, recommended the following: More funding for affordable housing in provincial transfers; new federal-provincial programs to assist working poor with housing costs; increased funding for housing co-ops; making surplus Crown lands available below market value for low-income housing; and eliminating substandard aboriginal housing by the year 2000.

Now that the Minister of Finance is in a position where he can fulfil some of these recommendations, he chooses to ignore the plight of the homeless and those who live in inadequate housing. While the government has committed some infrastructure money to housing, there is still no national housing strategy in place. Canada, in fact, is the only developed country in the world without a national housing strategy.

Recognizing the responsibility for the provision of social housing rests with the provinces, Ottawa should renew its financial commitment to social housing with the objective of

ensuring that low-income Canadians have access to new affordable housing, and soon. We believe that the federal government, in partnership with provincial, territorial, and municipal governments, should develop a national housing policy — a policy that acknowledges the need for Ottawa to be an active partner in the provision of funding and leadership in the area of social housing, and that states that a portion of this federal funding should be directed to new cooperative housing programs.

Honourable senators, the Minister of Finance has promised that “the best of Canada is yet to come.” Well, what are we waiting for? This budget only brings temporary relief to taxpayers and does little to strengthen the health and social systems we cherish as Canadians. The Prime Minister proudly proclaimed last weekend that the “sun is shining in Canada.” It may be shining for some people, honourable senators, but a whole sector of Canadians are not feeling its warmth.

On motion of Senator Kinsella, debate adjourned.

The Senate adjourned until tomorrow at 2 p.m.





## CONTENTS

Wednesday, March 22, 2000

	PAGE		PAGE
<b>SENATORS' STATEMENTS</b>		<b>Solicitor General</b>	
<b>The Late Honourable Michael Starr, P.C.</b>		Miramichi, New Brunswick—Possible Withdrawal of Gun Registry.	793
Tributes. Senator Andreychuk .....	790	Senator Kinsella .....	793
Senator Forrestall .....	790		
<b>International Day for the Elimination of Racial Discrimination</b>		<b>Delayed Answers to Oral Questions</b>	
Senator Oliver .....	791	Senator Hays .....	793
<b>The Honourable Landon Pearson</b>			
Tribute. Senator Bryden .....	791	<b>Foreign Affairs</b>	
<b>Visitors in the Gallery</b>		Advice to Companies Seeking to Do Business in Countries with Human Rights Violations.	
The Hon. the Speaker .....	791	Question by Senator Andreychuk.	
		Senator Hays (Delayed Answer) .....	793
<b>ROUTINE PROCEEDINGS</b>			
<b>Aboriginal Peoples</b>		<b>Fisheries and Oceans</b>	
Committee Authorized to Meet During Sitting of the Senate.		The Budget—Allocations for Nova Scotia and for Research on East Coast.	
Senator Austin .....	791	Question by Senator Oliver.	
		Senator Hays (Delayed Answer) .....	794
<b>QUESTION PERIOD</b>			
<b>Transport</b>		<b>National Defence</b>	
Rail Safety. Senator Forrestall .....	792	Proposal to Develop Ballistic Missile Defence System with United States—Request for Information.	
Senator Boudreau .....	792	Question by Senator Roche.	
		Senator Hays (Delayed Answer) .....	794
<b>VIA Rail</b>		<b>Foreign Affairs</b>	
Possible Announcement on Restructuring—Request for Information.		Cuba—Efficacy of Quiet Diplomacy.	
Senator Oliver .....	792	Question by Senator Andreychuk.	
Senator Boudreau .....	792	Senator Hays (Delayed Answer) .....	799
<b>Export Development Corporation</b>			
China—Influence of Environmental Policy in Granting of Funds to Three Gorges Dam Project. Senator Andreychuk .....	792	<b>ORDERS OF THE DAY</b>	
Senator Boudreau .....	793	<b>The Budget 2000</b>	
Influence of Human Rights Policy on Granting of Funds.		Statement of Minister of Finance—Inquiry—Debate Adjourned.	
Senator Andreychuk .....	793	Senator Cohen .....	800
Senator Boudreau .....	793		



*If undelivered, return COVER ONLY to:*  
Public Works and Government Services Canada —  
Publishing  
45 Sacré-Coeur Boulevard,  
Hull, Québec, Canada K1A 0S9



A1  
Y1  
D32

Conserved  
by the  
Library of Parliament



CANADA

# Debates of the Senate

2nd SESSION

•

36th PARLIAMENT

•

VOLUME 138

•

NUMBER 38

OFFICIAL REPORT  
(HANSARD)

Thursday, March 23, 2000



THE HONOURABLE GILDAS L. MOLGAT  
SPEAKER

## CONTENTS

(Daily index of proceedings appears at back of this issue.)

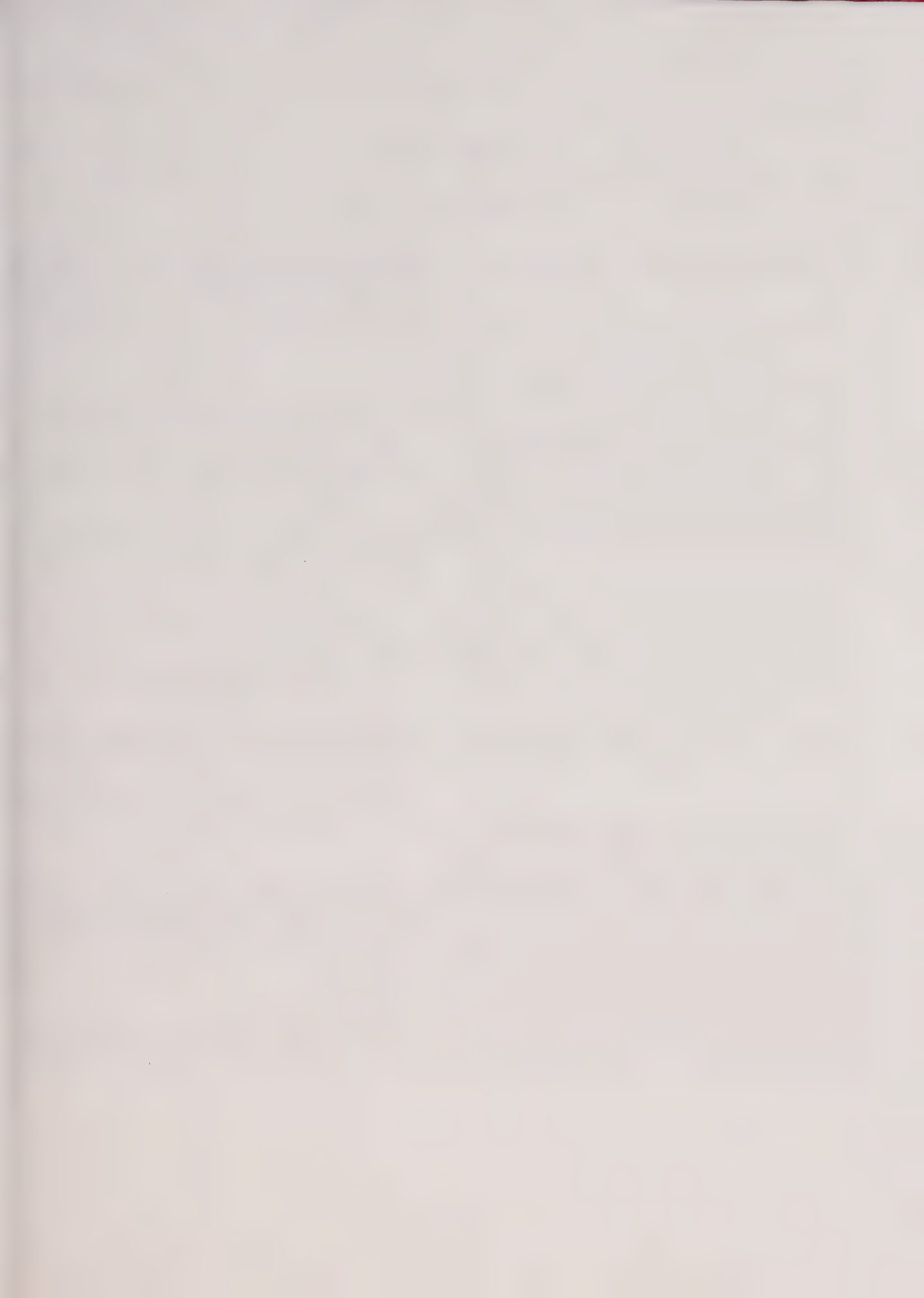
*Debates*: Chambers Building, Room 943, Tel. 996-0193

---

Published by the Senate

Available from Canada Communication Group — Publishing, Public Works and  
Government Services Canada, Ottawa K1A 0S9,

Also available on the Internet: <http://www.parl.gc.ca>





## THE SENATE

Thursday, March 23, 2000

The Senate met at 2:00 p.m., the Speaker in the Chair.

Prayers.

[Translation]

### ROUTINE PROCEEDINGS

#### THE ESTIMATES, 1999-2000

REPORT OF NATIONAL FINANCE COMMITTEE ON  
SUPPLEMENTARY ESTIMATES (B) PRESENTED AND PRINTED

**Hon. Lowell Murray:** Honourable senators, I have the honour to present the third report of the Standing Senate Committee on National Finance, which addresses Supplementary Estimates (B) for 1999-2000. I request that the report be printed as an appendix to the *Journals of the Senate*.

**The Hon. the Speaker:** Is it agreed, honourable senators?

**Hon. Senators:** Agreed.

(*For text of report, see today's Journals of the Senate, Appendix "A", p. 425.*)

**The Hon. the Speaker:** Honourable senators, when shall this report be taken into consideration?

On motion of Senator Murray, report placed on the Orders of the Day for consideration at the next sitting of the Senate.

[English]

REPORT OF NATIONAL FINANCE COMMITTEE  
ON MAIN ESTIMATES PRESENTED AND PRINTED

**Hon. Lowell Murray:** Honourable senators, I have the honour to present the fourth report of the Standing Senate Committee on National Finance, which deals with the Main Estimates for the fiscal year ending March 31, 2000.

I request that the report be printed as an appendix to today's *Journals of the Senate*.

**The Hon. the Speaker:** Is it agreed, honourable senators?

**Hon. Senators:** Agreed.

(*For text of report, see today's Journals of the Senate, Appendix "B", p. 428.*)

**The Hon. the Speaker:** Honourable senators, when shall this report be taken into consideration?

On motion of Senator Murray, report placed on the Orders of the Day for consideration at the next sitting of the Senate.

#### THE ESTIMATES, 2000-01

REPORT OF NATIONAL FINANCE COMMITTEE  
ON MAIN ESTIMATES PRESENTED AND PRINTED

**Hon. Lowell Murray:** Honourable senators, I have the honour to present the fifth report of the Standing Senate Committee on National Finance, which deals with the Main Estimates for the fiscal year ending March 31, 2001.

I request that the report be printed as an appendix to today's *Journals of the Senate*.

**The Hon. the Speaker:** Is it agreed, honourable senators?

**Hon. Senators:** Agreed.

(*For text of report, see today's Journals of the Senate, Appendix "C", p. 430.*)

**The Hon. the Speaker:** Honourable senators, when shall this report be taken into consideration?

On motion of Senator Murray, report placed on the Orders of the Day for consideration at the next sitting of the Senate.

[Translation]

#### APPROPRIATION BILL NO. 4, 1999-2000

FIRST READING

**The Hon. the Speaker** informed the Senate that a message had been received from the House of Commons with Bill C-2 granting her Majesty certain sums of money for the Public Service of Canada for the financial year ending March 31, 2000.

Bill read first time.

**The Hon. the Speaker:** Honourable senators, when shall this bill be read the second time?

On motion of Senator Hays, bill placed on the Orders of the Day for second reading at the next sitting of the Senate.

[English]

## APPROPRIATION BILL NO. 1, 2000-01

### FIRST READING

**The Hon. the Speaker** informed the Senate that a message had been received from the House of Commons with Bill C-30, for granting to Her Majesty certain sums of money for the Public Service of Canada for the financial year ending March 31, 2001.

Bill read first time.

**The Hon. the Speaker:** Honourable senators, when shall this bill be read the second time?

On motion of Senator Hays, bill placed on the Orders of the Day for second reading on Tuesday next, March 28, 2000.

## ASIA-PACIFIC PARLIAMENTARY FORUM

### EIGHTH ANNUAL MEETING—NOTICE OF INQUIRY

**Hon. Sharon Carstairs:** Honourable senators, I give notice that on Tuesday next, March 28, 2000, I will call the attention of the Senate to the eighth annual meeting of the Asia-Pacific Parliamentary Forum held in Canberra, Australia, from January 9 to 14, 2000.

## CANADA-JAPAN INTER-PARLIAMENTARY GROUP

### TENTH ANNUAL BILATERAL MEETING WITH JAPAN-CANADA PARLIAMENTARIANS FRIENDSHIP LEAGUE— NOTICE OF INQUIRY

**Hon. Dan Hays (Deputy Leader of the Government):** Honourable senators, I give notice that on Tuesday next, March 28, 2000, I will draw the attention of the Senate to the tenth annual bilateral meeting of the Canada-Japan Inter-Parliamentary Group and the Japan-Canada Parliamentarians Friendship League held in Toyko, Hiroshima and Shikoku, Japan, from November 6 to 13, 1999.

## VISITORS IN THE GALLERY

**The Hon. the Speaker:** Honourable senators, I should like to draw to your attention a group of young Canadians in our galleries. It is the group known as Forum of Young Canadians. They were received this morning in the lobby of the Senate. A number of senators attended.

[Translation]

This morning they had a session in the Senate chamber and sat in your seats. For that length of time, they were senators.

**Some Hon. Senators:** Hear, hear!

[English]

On behalf of all senators, I wish you welcome to our galleries this afternoon.

## QUESTION PERIOD

### NATIONAL DEFENCE

#### SEA KING HELICOPTERS—LEVEL OF FLIGHT TRAINING FOR PILOTS

**Hon. J. Michael Forrestall:** Honourable senators, I have a question or two for the Leader of the Government in the Senate having primarily to do with the maintenance of flying proficiency for helicopter pilots and co-pilots. The minister is aware of the very high level of unreliability of the Sea King. Coupling that with the fact that it needs some 30 hours of maintenance for every hour of flying time makes it relatively unavailable for things like flying training. Bear in mind also, that, as with anything, you must use it frequently — you must train on it, you must practice with it, and you must get used to the variables. Even on new equipment, this is necessary. It is especially necessary on aging craft such as the Sea King.

My concern is with the growing shortage of funds for maintenance, and therefore, the unavailability of the aircraft for the amount of flight training that is desirable. I know pilots are getting a basic amount, but they need practice in handling an aging aircraft with eccentricities such as those developed in the Sea King, with leaking fuel lines and so on. How does the government intend to ensure that the pilots and co-pilots of the Sea King maintain a very high level of flight training?

**Hon. J. Bernard Boudreau (Leader of the Government):** Honourable senators, we have all seen evidence in the recent budget of a recommitment to additional funding for our Armed Forces.

Specifically with relation to the Sea King, as we have discussed on many occasions in the Senate, this military equipment is obviously reaching the end of its useful life. It does require a high number of hours of maintenance for each hour of flight time. However, we are assured by both our military personnel and by the company that is primarily responsible for servicing and ensuring that the aircraft is available, ready and safe for our Armed Forces that the maintenance is being done.

With particular respect to the number of hours of training which are available to the pilots of the Sea King helicopters, I am not aware offhand of those current levels. Nor am I aware of whether or not they have gone down and there are fewer hours of flying training this year than there were last year or the year before. However, I can make the appropriate inquiries with the Minister of National Defence. I can ask him whether or not there have been any dramatic reductions in the amount of flying hours by Sea Kings and their pilots.



## REPLACEMENT OF SEA KING HELICOPTERS

**Hon. J. Michael Forrestall:** Honourable senators, this government promised Sea King replacements by the end of the decade. We are now three months past that deadline, as we are all aware.

We saw the skill with which a helicopter pilot in East Timor safely landed in the ocean and was able to start his plane and fly back to his base. That incident can tell anyone who wants to think about it several things. First, that pilot was damn proficient. However, why did he shut off the fuels? He shut off the fuel because someone had told him about something, but he had never practised it. He had never gone out in a plane and tried that out. It might work in some aircraft, but it does not work in ancient combatants like Sea King helicopters.

When will we get some indication from this government that they will at least open the project office? We now know that Cougars, Cormorants and Sikorsky's are in contention. We now have enough of a body of informed opinion or intelligence on the construction of these aircraft to know they are safe and can handle nicely.

When will we get the project office open, and when will we give the military an indication that it is now time for the Government of Canada to replace the Sea King helicopters?

**Hon. J. Bernard Boudreau (Leader of the Government):** Honourable senators, the particular incident in East Timor to which the honourable senator refers is an example of what some initially thought was equipment failure. After investigation and report it seemed that the unscheduled landing was as a result of activity undertaken by the pilot.

• (1420)

What this illustrates is that no matter how well-trained our personnel may be, occasionally minor errors can occur.

**Senator Forrestall:** That was not a minor error.

**Senator Boudreau:** We are extremely fortunate that we have a well-trained military. I am confident that the Sea King pilots are all professionals and are well able to perform the duties assigned to them. I wish that we had newer helicopters, as does the honourable senator. I can only reassure him once again that the Minister of National Defence shares our wish, and hopefully this matter will move forward in the near future.

REPLACEMENT OF SEA KING HELICOPTERS—  
FUNDS IN MAIN ESTIMATES, 2000-01

**Hon. Terry Stratton:** Honourable senators, the Main Estimates were reviewed yesterday in the Standing Senate Committee on National Finance. On perusal, it would appear there is nothing in the Estimates for the next fiscal year for helicopters. Is that accurate?

**Hon. J. Bernard Boudreau (Leader of the Government):**

As the Honourable Senator Forrestall has pointed out in the past, and as he will point out to me again if I am not clear about this, the actual expenditures to bring new aircraft on stream will be a multi-year endeavour. In fact, it may well be that if a decision were made to proceed full speed ahead tomorrow morning, there would be no large expenditures of money in the next fiscal year. It is a multi-year commitment, and one that we hope will be underway as soon as possible.

**Senator Stratton:** Is the Leader of the Government in the Senate informing us that in the fiscal year 2000-01 there is no money? None? That means that we must wait for the following fiscal year to have any money whatsoever to begin replacing helicopters and that five years later we might get a helicopter. Is that true, yes or no?

**Senator Boudreau:** Honourable senators, the answer must be no to the the honourable senator's assumption. I have said that it is a multi-year process and not something we can decide upon and implement in one year. Honourable senators know that. The procurement process itself will take a period of time to ensure that as we replace the Sea King helicopters, we get the best and the most appropriate piece of equipment for use by our Armed Forces.

**Senator Kinsella:** You had it.

**Senator Boudreau:** In fact, there may be activity. What I have said is that there will not be any major expenditures. Supposing the process began tomorrow morning, we would not look at any major expenditures in the next fiscal year.

## HEALTH

## RESTRUCTURING AND REVITALIZING SYSTEM

**Hon. W. David Angus:** Honourable senators, today Canadians are looking for two vital things from their government — a revived and revitalized health care system on the one hand, and lower taxes on the other, both of which would provide an increase in the standard of living for all Canadians, especially young Canadians. Unfortunately, this government has provided little of either. Our health care system needs a great increase in cash transfers back to 1994 levels and, more important, it needs an infusion of new ideas and innovative thinking.

This Liberal government has been completely incapable of providing this kind of leadership and vision. In fact, the government's injection of cash for health care in the recent budget was smaller than the amount of grants that HRDC doled out in the 1999 fiscal year. Some of the grants were allegedly made to help companies in the Prime Minister's own riding pay off bank loans.

**Senator Perrault:** The honourable senator is being very partisan.



**Senator Angus:** To the Leader of the Government in the Senate, I ask the following question: Why is it that with our elderly population in the process of doubling over the next 15 years, his government seems to be more interested in squandering taxpayers' dollars on questionable grants and shady business deals than in restructuring our health care system to accommodate the different needs and higher costs this change will bring about?

**Some Hon. Senators:** Oh, oh!

**Hon. J. Bernard Boudreau (Leader of the Government):** Honourable senators, I will ignore some of the preamble to that question.

**Senator Graham:** Ignore all of it.

**Senator Boudreau:** Honourable senators, the reason for that is we have had a debate here about the need in this country for government to intervene in order to bring the dignity of work to our citizens who are in less fortunate circumstances than some of us sitting in this chamber.

**Senator Angus:** More spin.

**Senator Boudreau:** I will not apologize for that. As well, I will not address the question at any length because my honourable friend and I have spoken on this issue in the past.

As to the question of health care, I am aware more specifically with respect to Nova Scotia because that is my home province. If we look at the last two federal budgets, two things happened. Significant funding was placed back into the CHST and the equalization formula was changed. The number will come into effect over a five-year period because equalization agreements are for five years, as are the contributions. Over \$1 billion in new money will be coming to the Government of Nova Scotia.

Honourable senators, I have not examined in detail the numbers for the other provinces, but I very much expect that they will be similar, particularly in regard to benefits that come under the equalization agreements. Therefore, a great deal of new money has been and will be brought into the provincial budgets, which is available for use in the field of health care.

The problem is — and I think many people believe this, perhaps even the honourable senator — that shovelling more money at health care will not yield the solution we need in this country. The status quo, even if it is fuelled by more dollars, is not acceptable and will not be acceptable in the years to come.

Honourable senators, we must be more imaginative about this problem. Admittedly, the federal government must take a leadership role. In saying that, we also must recognize the Constitution of this country, which places the delivery for health care clearly in the hands of the provinces. The provinces are the deliverers of health care.

I welcome the honourable senator's interest in this area. Health care is probably the biggest challenge government has in this country in the next 10 years. The Prime Minister, the Minister of Health and the Minister of Finance have all said that we must come together because this is a joint area of jurisdiction. On the night of the budget, the Honourable Paul Martin said:

Let's come together, let's deal with the problems and the challenges of the health care system, and we will be there with the money.

**Senator Angus:** Honourable senators, I hope the Honourable Paul Martin will be there to help out.

I thank the government leader for that answer because I do have a deep and abiding interest in this field. That is why I used nice words such as "restructuring" and "revitalizing". Yes, imaginative solutions are required, and I am delighted to hear that the government is addressing that issue. The honourable leader can count on my cooperation and on the cooperation of my colleagues.

## AUDITOR GENERAL

### GOVERNMENT SUPPORT PROGRAMS—ACCOUNTING CONTROLS

**Hon. W. David Angus:** Honourable senators, I have an item hot off the press from Auditor General Denis Desautels, who this morning was able to discuss in another place some of the issues surrounding the HRDC grants. He indicated that the problems with the job creation grants are not limited or confined to the Department of Human Resources Department. He expressed great frustration as to how these grants are handled in general.

Without getting into the rhetoric we sometimes slip into by accident in this place, and trying to be nice, of course, could the Leader of the Government at least share with honourable senators what these other departments are, where the problems are and where the frustrations arise?

• (1430)

**Hon. J. Bernard Boudreau (Leader of the Government):** Honourable senators, in any area of government activity based on the belief that government has a role to intervene, we run the risk of, on occasion, not dealing with things as effectively and thoroughly as we would hope.

It would not surprise me if that were the case with some regional development initiatives, whether it be with the Western Regional Development Fund or the Atlantic Canada Opportunities Agency. However, if such is the case, then the solution is to bring a stricter control and a more diligent approach to those programs, to find out if there is money that is not properly accounted for, to locate it, and to rectify the problem. The solution is not to eliminate the program. My mother had an expression: Don't throw out the baby with the bath water.

[Translation]

## REFERENDUM CLARITY BILL

### APPLICATION OF TERMS

**Hon. Jean-Claude Rivest:** Honourable senators, the Right Honourable Prime Minister of Canada, Jean Chrétien, last weekend, at the Liberal Party of Canada convention which, as we know, was an opportunity to exchange ideas on Canada's future, said in his speech that Bill C-20 provided a guarantee to Canadians that, should there be another referendum, it would necessarily be on the secession of Quebec from the rest of Canada. Did I understand correctly? Do Canadians have, with Bill C-20, a guarantee that the question will be clear and will deal with the secession of Quebec from the rest of Canada?

[English]

**Hon. J. Bernard Boudreau (Leader of the Government):** Honourable senators, that question is quite timely because I anticipate that later in the day we may be engaged in debate of that very piece of legislation. Obviously, the purpose of that legislation, in its three clauses, is to ensure that if a question is put, not only in Quebec but in any province that may be considering separating, it is put clearly. A clear question involves the option, not of entering negotiations on some sovereignty association or some variety of semantics, but of secession and independence.

[Translation]

**Senator Rivest:** My question is specific. Does the bill guarantee to Canadians that this will be the case?

[English]

**Senator Boudreau:** Honourable senators, we will address that in the debate, but the bill quite clearly indicates that that in fact has to be the case before the Government of Canada will enter negotiations with respect to the constitutional requirements for any separation.

[Translation]

**Senator Rivest:** Therefore, if Canadians have that guarantee with Bill C-20, this supports the claims of people like Mr. Charest, the leader of the Quebec Liberal Party, and Mr. Ryan, who are saying that this bill infringes on the freedom and prerogatives of the National Assembly. Would the National Assembly not be in a position to ask a question other than the one proposed by Bill C-20?

[English]

**Senator Boudreau:** Honourable senators, later in the afternoon, I will be addressing that specific issue in my speech.

Let me say, though, that the legislation of the Parliament of Canada will not restrict the legislature of Quebec from asking any question, and framing it in any way they want. However, the legislation will say that there is no obligation on the people of Canada and the Government of Canada to sit down and talk about secession unless that question is clear.

[Translation]

**Senator Rivest:** Therefore, there is no guarantee provided to Canadians that the question will be on secession. It is a case of "to be or not to be".

[English]

**Senator Boudreau:** The National Assembly of Quebec, the Legislative Assembly of British Columbia, or the Legislative Assembly of Nova Scotia can ask any question on any occasion and word it in any way they wish. We do not wish to interfere with that. There would be no point. Why would we? I will be referring later to some very distinguished Canadians who believe that Bill C-20 in no way infringes upon the rights of provincial legislatures to do as they wish in framing questions.

The key element, though, is that the people of Canada and the Government of Canada have no obligation. This is pursuant to, and consistent with, the opinion of the Supreme Court of Canada, to sit down and negotiate secession, if that is the kind of question that the seceding province chooses to ask.

[Translation]

**Senator Rivest:** Honourable senators, if the National Assembly of Quebec or any other legislative assembly can ask whatever question it wants, then Canadians have no guarantee that the question will be about secession. I agree that the Government of Canada has the right to say that it wants the question to be on this. But why have a bill? Mr. Trudeau referred to this.

[English]

**Senator Boudreau:** Honourable senators, the bill clearly outlines the obligation of the House of Commons to indicate whether or not, in our view, the question is clear.

**Senator Kinsella:** The House of Commons?

**Some Hon. Senators:** Oh, oh!

**Senator Boudreau:** That issue, it seems to me, should be cleared up before Quebecers, Albertans or whoever go to the polls on any such question. I cannot imagine why anyone, anywhere, except for the separatists in Quebec, would argue on behalf of confusion.

**Senator Lynch-Staunton:** That is what the bill does. Come on!



## HUMAN RESOURCES DEVELOPMENT

### EMPLOYMENT INSURANCE—EFFECT OF INTENSITY RULES ON SEASONAL WORKERS

**Hon. Donald H. Oliver:** Honourable senators, I have a question for the Leader of the Government in the Senate. It is a request that he comment on a report in *The Chronicle-Herald* entitled: "Ottawa backs off EI promise." It reads as follows:

Human Resources Minister Jane Stewart is backing away from the prime minister's promise to fix problems with employment insurance intensity rules that punish seasonal workers in Atlantic Canada.

The article was dealing particularly with the province of Nova Scotia.

**Senator Lynch-Staunton:** Ask for an audit first.

**Hon. J. Bernard Boudreau (Leader of the Government):** Honourable senators, I was not party to any discussions that the Minister of Human Resources Development may have had, but I can say that the Prime Minister has indicated in a very public way his concern on this issue. He said that he would be reviewing it. I am confident that he means what he said.

**Senator Lynch-Staunton:** Of course. Just like the GST.

### DELAYED ANSWER TO ORAL QUESTION

**Hon. Dan Hays (Deputy Leader of the Government):** Honourable senators, I have a response to a question raised in the Senate on March 2, 2000 by Senator Wilson regarding the government's commitment to alleviate poverty to the UN Human Rights Committee.

### UNITED NATIONS

#### GOVERNMENT COMMITMENTS TO ALLEVIATE POVERTY TO HUMAN RIGHTS COMMITTEE

(Response to question raised by Hon. Lois M. Wilson on March 2, 2000)

Canada appeared before the UN Human Rights Committee on March 26, 1999, in New York. The Canadian delegation was led by the Honourable Hedy Fry, Secretary of State for Multiculturalism and Status of Women.

The Committee examined Canada's fourth report on measures taken to implement the *International Covenant on Civil and Political Rights* in Canada from January 1990 to December 1994. The questions posed by the Committee were both pointed and fair, resulting in a forthright and positive exchange. The strong representation of the Canadian delegation helped underline Canada's continuing

commitment to human rights in general and to the implementation of its international obligations.

Following its review of Canada's report, the Committee issued Concluding Observations that outline positive aspects of Canada's commitment and areas of concern and recommendations. The complete text of the Concluding Observations, as well as the *International Covenant on Civil and Political Rights*, and Canada's fourth report can be found on the Web site of the Human Rights Program of the Department of Canadian Heritage at the following address: [www.pch.gc.ca/ddp-hrd/](http://www.pch.gc.ca/ddp-hrd/).

[Translation]

### VISITORS IN THE GALLERY

**The Hon. the Speaker:** Honourable senators, I call to your attention another group of visitors in our gallery. It is a group from the Eastern Townships called "Les étudiantes ambassadrices et étudiants ambassadeurs de l'Estrie". Its members come from South Africa, Algeria, Burundi, Colombia, the Congo, Gabon, Guadeloupe, Iran, Morocco, Mexico and Tunisia. They are graduates of the Université de Sherbrooke and Bishop's University. Once they return to their homeland, they will be ambassadors for the Eastern Townships. On behalf of all honourable senators, I welcome you to the Senate of Canada and wish you an enjoyable stay in Ottawa.

[English]

• (1440)

### CANADIAN DISTRICT OF THE MORAVIAN CHURCH OF AMERICA

#### PRIVATE BILL TO AMEND—MESSAGE FROM COMMONS

**The Hon. the Speaker** informed the Senate that a message had been received from the House of Commons returning Bill S-14, to amend the Act of incorporation of the Board of Elders of the Canadian District of the Moravian Church in America, and acquainting the Senate that they have passed this bill without amendment.

### ORDERS OF THE DAY

#### BUSINESS OF THE SENATE

**Hon. Dan Hays (Deputy Leader of the Government):** Honourable senators, under "Government Business", I request that the Senate deal first with No. 3, the second reading of Bill C-20.



**BILL TO GIVE EFFECT TO THE REQUIREMENT FOR CLARITY AS SET OUT IN THE OPINION OF THE SUPREME COURT OF CANADA IN THE QUEBEC SECESSION REFERENCE**

**SECOND READING—DEBATE ADJOURNED**

**Hon. J. Bernard Boudreau (Leader of the Government)** moved the second reading of Bill C-20, to give effect to the requirement for clarity as set out in the opinion of the Supreme Court of Canada in the Quebec Secession Reference.

He said: Honourable senators, I am honoured to rise in sponsorship of Bill C-20, arguably the most important bill for Canada that this chamber has been asked to consider in many years. A nation strongly united is the most important legacy we can leave to future generations. Those who would challenge that legacy have an obligation to be crystal clear about the alternative.

Bill C-20 demands clarity and transparency from any initiative that could lead to the separation of any province from our great country. Before the federal government would enter into negotiations on terms of any proposed secession, a clear majority on a clear question would be required in any referendum.

An observer not familiar with the Canadian political scene would no doubt be astonished to see a government legislating in order to ensure clarity, particularly on an issue of such critical importance as possible secession. However, the past has taught us, all too well, the pressing need for such legislation. I ask honourable senators to remember the referendums held in 1980 and in 1995.

Let me be clear: Nothing in this bill would stop the Quebec government asking its voters any question it wishes to ask. Nothing in this bill in any way affects or changes the absolute right of the Quebec government — or any provincial government, for that matter — to go to its voters on any question of its choosing. However, the bill demands that, before undertaking any negotiations that could lead to secession, the Government of Canada must be satisfied that the population of a province has clearly expressed its will to secede.

Why has the government introduced this bill now, when secession appears to be waning in popularity in Quebec? Many people, including several in this chamber, have raised this question. The government takes no pleasure in this action. There are many other issues that need to be addressed. However, the constant threat of a third referendum on Quebec secession in less than a generation leaves us no responsible choice but to act now, and before the crisis atmosphere of a referendum campaign. The Prime Minister of Canada asked the Premier of Quebec to agree to a commitment not to hold a referendum in the Premier's

current mandate. The Premier refused, forcing the Government of Canada to proceed with this bill.

What would Bill C-20 do? First and foremost, as its title states, it would give effect to the requirement for clarity, as set out in the opinion of the Supreme Court of Canada in the Quebec Secession Reference. Those who have studied the Supreme Court's opinion know that the drafters have taken our highest court's advice seriously and to heart.

The Supreme Court confirmed that there is no right, whether under international law or under the Constitution of Canada, for the unilateral secession of any province from Canada. The court also stated, however:

The federalism principle, in conjunction with the democratic principle, dictates that the clear repudiation of the existing constitutional order and the clear expression of the desire to pursue secession by the population of a province would give rise to a reciprocal obligation on all parties to Confederation to negotiate constitutional changes to respond to that desire.

The Supreme Court elaborated on the clarity required in a referendum result that would give rise to this reciprocal obligation to negotiate. In particular, the court said:

The referendum result, if it is to be taken as an expression of the democratic will, must be free of ambiguity both in terms of the question asked and in terms of the support it achieves.

Honourable senators, this is precisely what Bill C-20 would ensure, namely, that the Government of Canada would not enter into negotiations on the terms of secession of a province, unless the question asked was clear and the support of the population for that question was also unambiguous.

I realize that many honourable senators are familiar with the provisions of the bill already, but I would beg your indulgence to allow me to outline it briefly. It is a short bill with only three clauses. The first clause addresses the clarity of the question. It says that the House of Commons must make a determination on whether a proposed referendum question is clear.

The bill sets out a strict timetable for this process. This determination must be made within 30 days of the tabling or other official release of the question by the province. Provision is made for extending this period by an additional 40 days, should the 30-day period fall during a general election.

Honourable senators, I know that some people have said this determination should not be made until after the results of the referendum are known. This government believes that nothing positive is achieved by waiting and, in fact, considerable harm could be done. A question is either clear or it is not. Quebecers should know, going into the polling booth, the impact of the vote that they are about to cast.

The bill goes on to specify what must be considered by the House of Commons in making the determination on whether a question is clear. In particular, the bill states that the House must consider:

...whether the question would result in a clear expression of the will of the population of a province on whether the province should cease to be part of Canada and become an independent state.

Subclause 1(4) states, very plainly, that this clear expression of will cannot result from either a question that merely focuses on a mandate to negotiate without asking for a direct expression whether the province should cease to be a part of Canada or a question that mixes in other possibilities in addition to secession from Canada. Experience tells us that this type of provision is necessary.

• (1450)

I will read to honourable senators the question that was asked in 1980 of the Quebec voters. It stated:

The Government of Québec has made public its proposal to negotiate a new agreement with the rest of Canada, based on the equality of nations; this agreement would enable Québec to acquire the exclusive power to make its laws, levy its taxes and establish relations abroad — in other words, sovereignty — and at the same time to maintain with Canada an economic association including a common currency; no change in political status resulting from these negotiations will be effected without approval by the people through another referendum; on these terms, do you give the Government of Québec the mandate to negotiate the proposed agreement between Québec and Canada?

The question in 1995 was a great deal shorter but not much clearer. It stated:

Do you agree that Québec should become sovereign, after having made a formal offer to Canada for a new Economic and Political Partnership, within the scope of the *Bill respecting the future of Québec* and of the *agreement signed on June 12, 1995*?

The separatist leaders in Quebec maintain to this day that both those questions were clear. I doubt very much that anyone in this chamber would support that view.

A poll conducted at the end of the 1995 referendum campaign revealed that almost one of every five Yes voters believed that a sovereign Quebec would remain a province of Canada.

Professor Maurice Pinard, Professor Emeritus in the Department of Sociology at McGill University provided

extensive analysis of polls and studies to the legislative committee studying this bill in the other place. He stated:

In 1995, only about 50% of respondents realized that sovereignty did not necessarily mean partnership. The others believed that sovereignty would not be declared if partnership could not be achieved. In general, the confusion worked in the sovereigntists' favour both in 1980 and in 1995.

Bill C-20 would ensure that our Canada is not destroyed by such a question. If we are to be divided, it must be because that is truly what the people of a province desire.

Subclause 1(6) of Bill C-20 makes this explicit. It provides that the Government of Canada shall not enter into negotiations on secession if the House of Commons determines that the question would not result in a clear expression of the will of a population of a province on whether that province should cease to be part of Canada. That is clarity.

Honourable senators, let me reiterate: nothing in this bill purports to dictate to a province the question it may or may not ask of its voters in a referendum. The bill simply sets out clearly and precisely what the Government of Canada may or may not do, depending on the clarity of the question asked.

Some people have questioned whether the bill encroaches on the jurisdiction of the National Assembly. It does not. This is not merely my view or the view of the Government of Canada. In fact, this view is shared by figures as illustrious and diverse as Professor Peter Hogg, Dean of Osgoode Hall Law School; Professor Yves-Marie Morissette of the Faculty of Law at McGill University; Mr. Bob Rae, former premier of Ontario; and Mr. Claude Castonguay, widely acknowledged as one of the fathers of modern day Quebec. Mr. Castonguay, one of our former colleagues, was very clear. He stated:

I have read the bill more than once. I have read the criticisms that have been made of it, and I still cannot see how this bill limits the jurisdiction or the prerogatives of the Quebec National Assembly.

Mr. Gil Rémillard, a lawyer and former justice minister in Quebec, said:

I consider the federal bill not only does not affect Quebec jurisdiction, but in fact confirms it in a way.

The second clause of Bill C-20 looks to whether the clear referendum question receives the support of a clear majority of the province. This assessment by its very nature must be made after the vote. The Supreme Court was very clear that this assessment involves more than vote counting up to 50 per cent plus 1. I will quote from that opinion, which states:



Our political institutions are premised on the democratic principle, and so an expression of the democratic will of the people of a province carries weight, in that it would confer legitimacy on the efforts of the government of Quebec to initiate the Constitution's amendment process in order to secede by constitutional means.

The final line is the one to which I draw the attention of honourable senators. It states:

In this context, we refer to a 'clear' majority as a qualitative evaluation.

Such a qualitative evaluation cannot be made in advance. Indeed, the Supreme Court anticipated this, noting that it is an issue properly subject only to political evaluation. If the issue is one of simply counting up to 50 per cent plus 1, there is no political evaluation involved. We would not require the participation of "political actors." We could substitute a firm of chartered accountants.

Clearly, honourable senators, the Supreme Court recognized that something more than a mathematical formula is involved on an issue of such critical significance to the country as a whole and to the population of a particular province.

The third clause of the bill simply reflects what the Supreme Court stated in its opinion: there is no right under the Constitution of Canada to effect the secession of a province from Canada unilaterally. A constitutional amendment would be required. Moreover, such an amendment would require negotiations and those negotiations must involve "at least the governments of all of the provinces and the Government of Canada."

In other words, honourable senators, this bill, like the Supreme Court opinion, recognizes that the possible secession of a province would not simply affect that province; it would affect all Canadians from coast to coast.

As a Nova Scotian, I can tell honourable senators that the people in my province care very much about the future of this country. They deserve to have a voice and, with this bill, we will help to make it certain that they do have a voice.

Finally, subclause 3(2) of the bill enumerates some of the issues that would have to be addressed in such negotiations. This provision simply tracks the advice given this government by the Supreme Court.

• (1500)

Secession would not be easy for anyone, honourable senators. The Supreme Court openly acknowledged this, and we know it to be true. As the Attorney General of Saskatchewan told the court:

The threads of a thousand acts of accommodation are the fabric of a nation.

Honourable senators, I am confident that these difficult negotiations will not be necessary. The honourable Stéphane Dion is convinced, as am I, that the people of Quebec want to remain a part of Canada. He has said that he supports Bill C-20 as a Quebecer because it is the Quebecois who risk losing their country through the lack of clarity.

Honourable senators, surely this country has held together, not through ambiguity, as the Right Honourable Joe Clark has advocated, but because Canadians want to stay together. Clarity is the ally of Canada while ambiguity is the friend of the Parti Québécois.

Since this is a critical piece of legislation, dealing, as it does, with the very existence of our country, it is not at all surprising that the role assigned to the Senate has been the subject of intense debate and close scrutiny. There has been much speculation and discussion about the Senate's current role, in light of the 1998 Supreme Court opinion, and its proposed role under Bill C-20.

I wish to begin with something on which I believe we can all agree, namely, that the secession of a province from our federation would require an amendment to the Constitution. As the Supreme Court pointed out:

The secession of a province from Canada must be considered, in legal terms, to require an amendment to the Constitution.... Under the Constitution, secession requires that an amendment be negotiated.

How would negotiations begin? What would trigger a call to amend the Constitution in such a way? The court provided the following answer in a paragraph to which I referred earlier:

The federalism principle, in conjunction with the democratic principle, dictates that the clear repudiation of the existing constitutional order and the clear expression of the desire to pursue secession by the population of a province would give rise to a reciprocal obligation on all parties to Confederation to negotiate constitutional changes to respond to that desire.

It would impose an obligation on all parties to negotiate. No one would disagree, I believe, that the parties to Confederation, as referred to here, are the federal and provincial governments. They would be the entities that would have the obligation to negotiate constitutional changes if the support for separation was clear. Historically, all the constitutional negotiations have taken place between those levels of government.

Who would make the determination about whether there was, in the words of the court, "the clear repudiation of existing constitutional order and the clear expression of the desire to pursue secession by the population of a province"? Who would determine that? This is important, because, failing such a determination, there would be no duty to negotiate.



The court unequivocally rejects the suggestion that it should decide, saying:

The Court has no supervisory role over the political aspects of the constitutional negotiations. Equally the initial impetus for negotiation, namely a clear majority on a clear question in favour of secession, is subject only to political evaluation, and properly so.

This paragraph indicates that both the decision to enter into negotiations and the negotiations themselves are political matters that are part of one continuing process. How would the process begin? Who would make the original evaluation about whether there was a clear majority on a clear question? Who, in the view of the court, are the political actors who would have the obligation to make such decisions?

Though the court does not answer this question directly, when it again uses the words "political actors," it says:

...it is the obligation of the elected representatives to give concrete form to the discharge of their constitutional obligations which only they and their electors can ultimately assess....it would be for the democratically elected leadership of the various participants to resolve their differences.

It would, of course, be difficult to fit the Senate into this group of political actors, and it should be noted that, throughout its judgment, the court refers repeatedly to "elected representatives" and "democratically elected representatives."

I know I have gone on at some length on this point, but I believe it is important to place on record and to have it clearly understood that, historically, the Senate has not had the power to prevent constitutional negotiations from taking place and that there is nothing in the Supreme Court's opinion to suggest that it suddenly intended the Senate to have such a role.

Though the Senate has never had such a role, then again, neither has the House of Commons. Neither the Senate nor the House of Commons has ever participated in constitutional negotiations. Neither has ever been approached to give permission to the federal government before it chose to negotiate with the provinces. Neither needs to be consulted before the federal government enters into constitutional negotiations on any matter. That is the historical reality, and the 1998 Supreme Court opinion, in my view, does not change that reality.

At the present time, the executive, or cabinet, has the prerogative on whether to enter into negotiations concerning constitutional amendments, and though neither chamber has a direct role to play in that decision, our system of responsible government gives the House of Commons leverage that we in the Senate do not have.

The late Senator Eugene Forsey described responsible government as a system where the Queen or her representative acts on the advice of cabinet, which is —

...responsible, answerable...

and

...accountable to the House of Commons.... If the Cabinet is defeated in the House of Commons on a motion of censure or want of confidence, or on any motion which it considers of sufficient importance, it must either resign or make way for a new Government in the existing House, or else ask for a dissolution of Parliament and seek a new majority from the electors.... Where there is an Upper House, the Cabinet is not responsible to that House, and a defeat there does not entail either resignation or a request for dissolution.

According to the Supreme Court, the notion of responsible government, as we have seen described by Senator Forsey, is one of the central features of our democracy. I quote again:

Historically, the Court has interpreted democracy to mean the process of representation and responsible government and the right of citizens to participate in the political process as voters and as candidates.

As we have seen, "responsible government" assigns very different roles to the two chambers of Parliament, and there is nothing in the court's opinion to suggest that it was proposing a fundamental realignment with respect to the powers of those two chambers. The clarity bill respects those different roles and respectfully, I suggest, must be seen in this perspective.

In the legislation's absence, there would be no limitation on the government's prerogative to undertake negotiations on the secession of a province other than the confidence of the House of Commons, but that existing limitation or constraint that can be exercised at any time by the House of Commons is a very important one. It means that, though the government has the prerogative to embark on constitutional negotiations, it can be stopped at any time by a vote of non-confidence in the House of Commons.

• (1510)

Therefore, far from seeing Bill C-20 as a measure which somehow diminishes the place of our Senate in the parliamentary system, I see it as a proposal that reinforces and builds upon the fundamental tenets of responsible government.

**Senator Lynch-Staunton:** Well, let us shut this place down, if that is what they think of us.

**Senator Boudreau:** Those tenets have been the hallmarks of our democratic system of government since the time of Confederation. It does so by giving the House of Commons, to which the government is responsible and answerable, and which can force the government to resign and Parliament to dissolve, the power to prevent the government from entering into negotiations on secession following a referendum.

**Senator Lynch-Staunton:** This is the Senate, not the House of Commons.

**Senator Boudreau:** Bill C-20 should be seen as a proposal that provides a different mechanism to achieve the same end result, while respecting our tradition of responsible government that dates back to Confederation.

Honourable senators, another reality of our system of government that must be recognized and should be respected in both fact and spirit, is that, under our Constitution, the Senate does not now have a veto over constitutional amendments, even over amendments dealing with the Senate itself. Section 47(1) of the Constitution Act, 1982, provides that the Senate can delay a constitutional amendment for 180 days, but it cannot veto it. The House of Commons, by contrast, has a constitutional veto, and it is absolute.

**Senator Lynch-Staunton:** So what?

**Senator Boudreau:** Formerly, the Senate possessed such a veto, but relinquished it in December of 1981 when it voted 59 to 23 to adopt what became known as the Constitution Act, 1982. When all was said and done, we patriated our Constitution, enshrined an amending formula, and put into place a Charter of Rights and Freedoms. The new amending formula was critical because it changed dramatically the relationship between the federal and provincial governments, as well as the role of the Senate.

At that time, as minister of state, our colleague Senator Joyal, said, as reported in the *House of Commons Debates* of November 30, 1981, at page 13499:

Today we are on the eve of the most significant step in our constitutional history since Confederation, not only because we will soon attain full constitutional independence, but above all because we are going to ensure that provinces in the future will have the absolute right to play an essential role in this country's constitutional development.

The significance Senator Joyal placed on the new amending formula was not misplaced because it was that change in the role of the provinces that led to the change in the role of the Senate on constitutional matters. Senator Austin, who was also a minister of state at that time, spoke about this realignment on the day before the Senate voted to give up its constitutional veto. He described the change as follows:

...an arrangement under which some of the power that might have been exercised in the Senate for regional balance in the area of a constitutional change would now be exercised by the provinces directly through the amending formula. If we have not been superseded in constitutional matters, we have certainly been moved off to some degree, and while for this

last moment we would legally and constitutionally deny our consent, I think there is no one here who would suggest or advocate that in the evolution of the Canadian nation that would be an appropriate step, or that we would have any political mandate from whatever part of Canada to do so.

The historic truth is that the power of the Senate to represent regional interests, consented to by the founding provinces in 1867, although legislated by Great Britain, has been in part returned to them in the arrangement of constitutional change which is before us. The provinces have a role today perhaps not envisaged by the Fathers of Confederation, but they have it.

The Senate retains, however, within that very great area of law-making which does not relate to the Constitution, still a powerful legislative capacity charged with representation of all of the parts of Canada and all of the communities and minorities of Canada to look after their interest in the federal law-making system.

Honourable senators, suggestions have been made that the Senate should have a role in Bill C-20 identical to that of the other place. However, to amend the clarity bill in order to provide a veto for the Senate in the decision on whether to enter negotiations on secession would effectively constitute a constitutional veto for the Senate. If the Senate could block negotiations from ever starting, there would never be any amendments for Parliament or any legislature even to consider. I have personal difficulty with the logic of a proposition that would give the Senate a veto over the government's ability to enter into negotiations when it does not now have a veto over the results of those negotiations. It strikes me as an attempt to do indirectly what the Constitution does not allow us to do directly, namely to veto constitutional amendments. How does such a proposition respect the spirit of the existing amending formula? How does it respect the existing role of the Senate on constitutional matters, as so eloquently expressed by Senator Austin in this chamber almost 20 years ago?

Though the Senate's role has evolved and changed since Confederation, I do have a great deal of sympathy for those who would see the Senate as a final hurdle or backstop against those who would destroy our country. The thought of Canada without Quebec — or any other province, for that matter — is so abhorrent to me that I, too, would consider almost any option to prevent it from happening. That, however, does not change the fact that this is a country that was born under the rule of law, and has thrived under the political and social climate of voluntary association, consensus, and mutual respect. What would happen to those principles if a province expressed what the elected members of the House of Commons and elected members of the provincial legislatures believed to be a clear desire to pursue secession and the Senate did exercise a final backstop role by vetoing any and all such negotiations? What would be the effect within Canada of such a decision by the Senate during what would undoubtedly be a time of extraordinarily high tension and anxiety?



If there is not a popular will to keep the country whole, it will not remain whole, no matter what the Senate may do. In my view, the possibility of the two Houses of Parliament, both having a veto, coming to different conclusions on such a fundamental question, thereby paralyzing Parliament, the government and the country, is fraught with danger, particularly when one of those chambers has neither the power to command the confidence of the government nor a way to be directly accountable to the electorate.

This is not to say that the Senate should be or is without a role in this process. As I have explained, in the absence of Bill C-20, the federal government would have the unfettered prerogative to determine whether there was a clear majority on a clear referendum question. It would be under absolutely no obligation to take into consideration the views of the Senate, though, as a practical matter, it would need to be sensitive to the views of the House of Commons because of the risk of a motion of non-confidence. If Bill C-20 fails to pass, that state of affairs will remain unchanged.

• (1520)

In adopting the clarity bill, however, the Senate would be placing a serious constraint on the government's prerogative; a constraint that no government could subsequently remove without the express consent of the Senate through the adoption of new legislation. Furthermore, for the first time, it would be mandatory for the views of the Senate to be considered before that prerogative could be exercised and negotiations begun. Clauses 1(5) and 2(3) of Bill C-20 clearly state that the House of Commons "shall take into account...any formal statements or resolutions of the Senate..." on the clarity of the question and the majority. There is no discretion on that point; the views of the Senate must be taken into account before a decision is made whether or not to enter into negotiations.

Honourable senators, Canadians have never taken the narrow path. At a time when other nations believed that countries should be built by melting everyone into one national identity, our two founding nations established Canada on the principle of respect for cultural and linguistic diversity.

Today, once again, we are charting our unique path. With Bill C-20, we announce to the world that we are a nation of individuals who respect one another. We will not coerce the people of any province to remain within Canada, whether by force or by subterfuge. At the same time, however, we are confident that, if faced with a clear choice, Quebecers, along with other Canadians, will always choose Canada.

Has the process of moving forward with Bill C-20 been easy or without risk? Of course not. The Prime Minister told us just last weekend at the biennial convention of the Liberal Party of

Canada how difficult it was to decide to proceed, and of his personal concern. It is not easy to lead, especially when the consequences of failure are so great. Leadership does not mean that you are not afraid, but it does mean that you will not make fear your master. The enormity of the task does not absolve us of the need to address it.

Witnesses who appeared before the legislative committee in the other place on Bill C-20 demonstrated the success that this bill has already achieved. Quebecers will no longer risk losing their country to a confusing question. They have an absolute right to be a part of this country that they joined in founding.

This government respects and will uphold that right, just as it does for all Canadians in every province and all territories. We will not roll the dice with the future of our country. This government looks at the serious issues squarely, confident that, when the question is clear, the answer will also be clear. That answer, for generations past, present and future is Canada.

**Hon. John Lynch-Staunton (Leader of the Opposition):** Honourable senators, I will restrict my comments, because I am astounded at some of the extraordinary interpretations that were given to the role of the Senate.

**The Hon. the Speaker:** Honourable Senator Lynch-Staunton, is it your intention to speak?

**Senator Lynch-Staunton:** I wish to ask the minister a question. Before putting my question, however, I wish to say that I will be very cautious in my preliminary comment on the extraordinary interpretation given to the role of the Senate in various fields by the Leader of the Government in the Senate. I can only feel, however, that those interpretations will bring joy to the hearts of people like Mr. Gallaway and Mr. Nystrom, who find this place completely irrelevant. Some of the arguments brought by the Leader of the Government in the Senate will certainly help them in their argumentation against the Senate.

That being said, the leader spent some time trying to explain why the Senate should have no role in the negotiations leading to an amendment and anything preceding it. However, the court has made no reference regarding who should evaluate both the question and the answer. The government has decided that only the House of Commons should play a role in that exercise.

My question to the Leader of the Government is: Leaving aside what occurs once the results are in, does the minister agree that the House of Commons alone — which means the government — should evaluate the validity of the question and the validity of the answers and that the Senate, in that exercise, should be nothing more than a consultant-in-waiting?



**Senator Boudreau:** Honourable senators, the Supreme Court opinion, which I thought was thorough and exceptionally useful and which created a base for Bill C-20 did not require that the House of Commons be involved or that the Senate be involved. The determination on the clarity of the question and the result could have been done by the executive branch of government. However, the executive branch of government wisely involved the House of Commons, a body that is composed of the elected representatives of the people of this country, and whose confidence is necessary before the Government of Canada can proceed on any course of action — certainly one as fundamental and as important as negotiating constitutional change.

Historically, there was no prior prescription required by either house regarding negotiating constitutional change. That does not mean, in any way, that the opinion of the Senate is not an important part of this process. I think the debate that would occur in this place and the result of that debate would be a powerful directive.

At the end of the day, under this legislation, the Senate does not have the ability — and I will be very candid about that — to preclude negotiations from proceeding, any more than they would have the ability to preclude a constitutional amendment that might arise from those negotiations.

**Senator Lynch-Staunton:** My question concerns neither negotiations nor amendments. My question is: Why is the Senate of Canada eliminated from participating in a decision regarding the validity of the question? The Senate's role is not that its views must be taken, which is what the minister said, but that they "shall" be taken. That means, "Give us your views. We shall then take them into consideration, but that is all we have to do with them."

Why does the Leader of the Government in the Senate and his caucus feel that the role of the Senate in the possible breakup of this country, particularly in the preliminary stages, when the validity of the question will be decided, is completely irrelevant? Is he telling us that the House of Commons, being the only elected house, should be the final authority? If what he is saying about this is true, then why is it not true about bills? What I heard him say is that it is the elected members who should have the final authority on the breakup of this country and on deciding the question and on deciding on the majority. If that is so, why are we here as part of this bill? Why bother bringing the bill to us if we have no role to play in it?

**Senator Rivest:** We are a pressure group!

**Senator Boudreau:** First, in the view of the Senate it is not a choice, it is mandatory.

**Senator Lynch-Staunton:** It is not mandatory.

**Senator Boudreau:** The word "shall" is a mandatory instruction. The views of the Senate will be taken into account after debate, and I can only believe that they will be taken into account very seriously.

**Senator Lynch-Staunton:** They can be rejected.

**Senator Boudreau:** Honourable senators, none of us hopes or believes that we ever will reach that stage, but if we ever get that far, the Senate will play the same role then as it would play under any other constitutional amendment since 1981.

• (1530)

**Hon. Noël A. Kinsella (Deputy Leader of the Opposition):** Honourable senators, I have a question for the honourable senator. Will he share with the members of this chamber where in the opinion of the Supreme Court he finds justification for the remarks he has made that it is for elected representatives to determine the question?

The eighth paragraph of the preamble of the bill states, in part:

WHEREAS, in light of the finding by the Supreme Court of Canada that it would be for elected representatives to determine what constitutes a clear question —

Clause 1(3) refers to the House of Commons. The honourable senator said in his remarks that the drafters of the bill have taken this opinion to heart. Where in the Supreme Court's opinion does the Supreme Court opine that it is for the elected representatives to determine the question?

The court states in its opinion that it shall be for the "political actors" to determine the clarity of the question and the clarity of the majority. It states in another paragraph of the opinion that it will be for the political actors to determine what constitutes a clear majority on a clear question.

Where in the opinion of the Supreme Court does the honourable senators find reference to the "elected representatives?"

**Senator Boudreau:** Honourable senators, in the course of my speech I quoted a number of times directly from the Supreme Court opinion. The court specifically used the words "elected representatives." The Supreme Court opinion indicates clearly that this was the intention.

Based on some of the rationale I attempted to share with honourable senators earlier, the bill gives a particular role to the elected representatives who, in effect, at any point in any process of any negotiation, constitutional or otherwise, have the ability to deny the executive the opportunity or the right to continue such activity.

**Senator Kinsella:** Is not the honourable senator's argument that this bill is resting on the opinion of the Supreme Court? If that is true, then why has this bill not followed that opinion? It is only in paragraph 101 of the opinion that the court refers to third-phase negotiations. It states that the court may not be able to provide supervisory function over the negotiation process, but that that will be for "political actors" and, in the end, for the "elected representatives" who, again, are accountable to the electorate. That is referring to the negotiation process.

In its determination on the clarity of the question and on the clarity of the majority, the court has used the phrase "political actors", not the phrase "elected representatives."

**Senator Boudreau:** Am I correct in concluding from the question that the honourable senator agrees that the ability and the power to conduct negotiations is in the hands of the elected representatives? Is that what the honourable senator just said?

**Senator Kinsella:** I will clarify my question. In his speech, the Honourable Senator Boudreau told us that only members of the House of Commons would have a role in determining the clarity of the question and the clarity of the majority. He says that this bill rests upon the opinion of the Supreme Court.

The Supreme Court states clearly in its opinion that the determination of the clarity of the question and the clarity of the majority is to be determined by "political actors." In another paragraph of the opinion, and I repeat, it states that it is for the "political actors" to determine the clarity of the question and the clarity of the majority.

The Supreme Court is not talking about clarity of question and clarity of majority; it is talking about negotiations. It is on negotiations that the court says, "We cannot provide a supervisory role. It will be for the political actors and in particular for the elected representatives, who will be held accountable by the electorate, to determine whether these negotiations are acceptable."

I must return to the honourable senator's statement and ask him for clarification. He presented an argument based upon the opinion of the court, and the opinion of the court does not say that. Would the honourable senator please explain?

**Senator Boudreau:** The position of the bill is entirely consistent with the opinion. If Senator Kinsella can point out inconsistencies, I would be happy for him to do so.

The definition of "political actors" and what the court means by that phrase is clear from the decision as a whole. I could reread the quotes that I cited previously with specific respect to the discharge of those responsibilities that, under this bill, are triggered by a resolution in the House of Commons. In my view, that is entirely consistent with the views of the Supreme Court opinion.

I would be more than happy to discuss this at great length with the honourable senator, if that is his wish.

**Senator Lynch-Staunton:** Honourable senators, can the minister tell us that his opinion and that of the government is that the definition of "political actors" is the Parliament of Canada without the Crown and without the House of Commons? We have always considered that Parliament is made up of two houses, both of which contain political actors. The government is now telling us that in this case there is only one political actor, and it is not the Senate.

**Senator Boudreau:** Honourable senators, the issue is whether the Senate should be given the capacity by the legislation to exercise a veto on the negotiations. Under Bill C-20, that is not the case. By casting the opinion on whether a question is clear or the result is clear, that, in effect, is the issue of whether or not negotiations begin. In fact, that responsibility is given to the elected members.

**Hon. Lowell Murray:** Honourable senators, speaking of political actors, what is the government's response to the quite reasonable and moderate amendments suggested by the Assembly of First Nations? My friend will have received, as I think we all have, a letter from Mr. Phil Fontaine, Chief of the Assembly of First Nations, suggesting amendments that would include aboriginal peoples in the list of consultants.

**Senator Boudreau:** Honourable senators, I believe an amendment to that effect was moved and passed in the other place. I support it.

**Senator Murray:** Does the government agree with the position taken for the Supreme Court of Canada by some of the lawyers for the aboriginal peoples to the effect that there can be no change in the status of the aboriginal peoples of Quebec vis-à-vis the federal Crown and Parliament without their consent?

**Senator Boudreau:** I have not read any such opinion. From past experience, I never make decisions or give opinions on positions that I have not seen.

It is my understanding that the amendment that was passed gives aboriginal peoples a consultative role. In fact, their opinion will be received and reviewed.

**Senator Murray:** The question is whether the aboriginal peoples of Quebec can be transferred out of the jurisdiction of the federal Crown and Parliament without their consent. What is the government's position on that issue?

• (1540)

**Senator Boudreau:** With respect to the aboriginal peoples, I can only repeat what I have already said: The amendment that was proposed involving aboriginal peoples in the process was approved, and I presume it will also receive the support of the Senate.



**Senator Murray:** Let me ask on another subject arising from the minister's speech. He placed on the record the admittedly tortuous questions put in the 1980 and 1995 referendums in Quebec. Is it the minister's position that 85 per cent of the voters of Quebec who turned out to vote in the 1980 referendum and 94 per cent of the voters of Quebec who turned out in 1995 did so because they were confused about what was at stake?

**Senator Boudreau:** I am sure that all of the voters regarded the questions seriously. I am not sure all of them understood the consequences of their vote.

**Senator Murray:** I think my friend insults the intelligence of the Quebec voters.

**Senator Kinsella:** In his address, the honourable senator discussed negotiations as being the third phase in the secession process. Should they be successful, it would require a constitutional amendment. Which constitutional amending formula would apply, according to the honourable senator?

**Senator Boudreau:** I am sorry. I was distracted when the honourable senator asked the question.

**Senator Kinsella:** My question is quite simply: Which Constitution-amending formula would apply after the negotiations in phase three of this secession process?

**Senator Boudreau:** I do not anticipate that those negotiations would ever take place but, if they did, it would be the amending formula at the time.

**Senator Kinsella:** If it were to occur today, there are three formulae. Which of the three would apply: unanimity, seven-fifty, or bilateral?

**Senator Boudreau:** The amending formula that would apply to the Constitution would be the one which —

**Senator Nolin:** The one applicable.

**Senator Boudreau:** The one applicable, yes.

**Senator Lynch-Staunton:** Is that your final answer?

[Translation]

**Hon. Pierre Claude Nolin:** Honourable senators, I listened with considerable interest to the speech by the government leader at second reading. I remind the minister that the government did not want the Supreme Court to rule on the amending formula. We will all have plenty of time to address this.

On what constitutional authority is the government relying in introducing Bill C-20?

[English]

**Senator Boudreau:** Jurisdictionally, the executive has the ability through legislation to limit its own circumstance of activity. In this case, it chooses to place clearly in legislation the limits it will put on an ability that it normally possesses, which is the ability to negotiate constitutional amendments, as it has in the past.

[Translation]

**Senator Nolin:** One should not confuse negotiating and its result, we have no problem with that, everybody agrees, Parliament has the right to participate, a posteriori, after the negotiations. The government introduced a bill under which part of Parliament would have, a priori, the authority to restrict the activity of the executive. This is your answer, and it is not complete. Your bill is based on constitutional authority. You said constitutional authority exists because the executive is putting limits on its own ability. It goes a lot further than that. Parliament has been asked to decide on the possible secession of this country. On what constitutional authority is the government relying to introduce such legislation?

[English]

**Senator Boudreau:** The provision which the bill anticipates is the prescription or limitation of the executive's normal power to enter into negotiations or to enter into discussions. That limitation is contained in legislation that passed the other place and is now before us. Presumably it will pass here. Limits will be placed on the activity of the government with respect to some of its actions which normally it would be entitled to do, just as it may pass legislation which prescribes its executive activity in any number of areas.

**Senator Nolin:** I do not contest the executive authority to govern. No one is contesting that. The legislative body of the federal power is being asked to decide something. That means that you are convinced that we, as a Parliament, have the authority to make that decision.

You can negotiate whatever you want. After that, it will be for you politically to go to the electorate and be confronted with their opinion.

Now it is different. You are asking us, Parliament, to decide on something. I am asking you if we have the authority. If so, and I am sure that your answer will be yes, what is that authority?

**Senator Boudreau:** You are right; my answer would be yes. It would be the same authority with which an executive may prescribe or limit the scope of its activity in any number of ways. It may pass legislation which says it cannot enter into certain agreements with various provinces. It may prescribe what would normally fall within its executive powers in any number of ways, if it chooses to. I would say that that is precisely what is happening in this case.



**Senator Nolin:** I am sure the leader understands that in legislating it means that the Supreme Court will have a say. They said in their decision that they do not have a say. It is not up to them to decide; it is up to the political actors. Political action does not always equal legislation. The government has taken the route of legislation, which means that the court can enter into the debate and say that you have or do not have the right to do that. However, you took that decision. I want to know why the government took that decision and under what constitutional authority. I do not question your executive authority.

**Senator Boudreau:** Indeed, if we came to the day when these events all occurred and negotiations were a possibility, someone would have to decide. As I have said in my speech, how does one decide whether or not the conditions of the Supreme Court opinion have been met? The court does not want to decide. Although we cannot restrict people's access to the court absolutely, the court certainly does not want to decide.

In fact, in this case, the government chooses to prescribe its normally unfettered authority to enter into negotiations. It decided actively to circumscribe that approach and did so by bringing the elected representatives of the country into that process. I believe at least part of the rationale is that the people of the country will have the opportunity to express their views through their elected representatives.

**Hon. Gérard-A. Beaudoin:** The honourable senator referred to the 1982 amendment. It is true that the Senate has lost some power. However, that was as a result of a constitutional amendment, not an ordinary bill. The leader said that this bill is an ordinary bill, a bill on which this house has an absolute veto. It is true that if this bill is not accepted here, it will be killed.

In deciding to negotiate by the legislative path, the government is taking the risk that the result will face interpretation by the court.

• (1550)

That is the first risk. The second risk, of course, is that both Houses of Parliament will be involved because this Parliament has two houses. It was possible for the government to negotiate at an executive level. I do not understand why that has not been done, as it has always been done since Confederation. However, the minute legislative means are used or the legislative path is taken, a power is given to this house. Parliament is composed of two houses.

My friend is right — in 1982, the powers of the Senate were restricted but, I repeat, by a constitutional act, not by an ordinary statute.

Has the reference case of 1980 on the powers of the Senate been considered? In 1982 our powers were eroded, but that was the only time. How can we say that we are not, by means of a simple statute, an equal legislative house?

**Senator Boudreau:** Honourable senators, first, the executive has the authority to negotiate constitutional amendments any time it wishes. It has done that historically. It could do so if this bill were defeated here on the Senate floor; they could continue to negotiate constitutional amendments. It could do so without reference to the Senate and without reference to the House of Commons either, but certainly without reference to the Senate.

In effect, this bill does not take away from the Senate a role that it otherwise would have had. Without the legislation, the Senate would have no role prior to negotiations.

**Senator Beaudoin:** Honourable senators, we are being asked to vote in favour of this bill, but that is very difficult to do. With respect to clarity, I generally agree. I want clarity in everything. I want to save Canada and I am a strong federalist. That is not my problem. My problem is the means the government has taken to reach that goal. I do not see how I, as a senator, can vote for a bill that will leave the Senate with no power. As a senator, this worries me.

Perhaps the bill can be amended. I want to see this house in the picture if I am to say yes to the bill.

**Senator Boudreau:** Honourable senators, this bill requires passage in both Houses, as does any other piece of legislation. If this bill did not exist, the Senate would have no role to play with respect to negotiations. It would have a role to play only when it came to the constitutional amendment, if negotiations ended up at that stage. We would have the same role we had yesterday or the day before or back to 1981. Our role would not have changed without this legislation.

The executive of the Government of Canada has said that our role will change. Normally, the executive would not require the blessing of the Senate or the blessing of the House of Commons to enter into negotiations, but it decided to place prescriptions on their own ability and authority to negotiate.

The prescription that the government chose to place on itself was the formal approval by the House of Commons. It chose to prescribe what is otherwise an unfettered right to negotiate. That remains the same as it was yesterday, last week or 10 years ago. No one is changing that. It is simply the act of negotiating. The government has chosen to prescribe its normally unfettered right in a particular way.

My honourable friend may not agree with the way the government has chosen to limit its prerogative. If the government wanted to prescribe its own unfettered right, he may have preferred that both the House of Commons and the Senate should vote and approve. That should be a prior condition. That may be his preference.

**Senator Beaudoin:** We are two Houses or two actors, to use the Supreme Court's phrase. We are being asked to speak in favour of the bill, but from now on, my honourable friend is no longer an actor.

**Senator Boudreau:** The provisions will apply so that a debate can occur here and a resolution can be passed. I cannot imagine that a government would take such a resolution lightly.

I say this with the greatest of respect. I respected this institution before I came here, and that respect has increased dramatically since then.

I beg to differ with Senator Beaudoin. The Senate is not the same as the other place when it comes to constitutional matters. Forget the bill. The House of Commons has the ultimate veto over any constitutional amendment and the Senate does not.

The other difference is that the people of the country, however indirectly, express their views through their elected representatives, and it is important that their views are expressed. That is what responsible government is all about. I think, however, that the Senate does have an important role to play here.

**Senator Kinsella:** What is that role?

**Senator Boudreau:** The Senate has a continuing and important role to play, but it is not the same role, in my view.

[Translation]

**Hon. Jean-Claude Rivest:** Honourable senators, I would ask the minister to exercise greater caution when he talks about Quebecers who supposedly did not understand the question. I believe Quebecers, both in the 1980 and 1995 referendums, were just as intelligent as the other Canadians. This comment applies equally to those who voted no and to those who voted yes. Some of the Quebecers who voted yes are supposed to have misunderstood the question, but 100 per cent of those who voted no understood it! This argument is rather strange. I understand what the minister said, but I would ask that he exercise caution when using this rather strange argument.

The minister said that the bill provided no guarantee to Canadians that the referendum will be on the secession of Quebec. It appears that this bill does not change article 1 of the Parti Québécois agenda, which has been sovereignty-association or sovereignty-partnership for the past 30 years. This concept may create some confusion; that I acknowledge. This bill is merely wishful thinking, the expression of an intent, a wish or a desire of the federal government. The minister says that if the question is not clear, there will be no negotiation. The problem is national unity. If there is a referendum, if it addresses sovereignty-association — that being the agenda of the Parti Québécois — we know that the bill prohibits it, and the question will be unclear. If the referendum is lost, it is all fine and well, but if 3 millions Quebecers vote for it and there is a majority, the federal government says there will be no negotiation. What is going on? What progress has been made on national unity? Are these 3 million Quebecers going to disappear?

I would ask the minister to reflect on this. This bill makes absolutely no contribution to solving the problem of national

unity. The day after a referendum with an unclear question, with an unclear majority, with the refusal to negotiate, and so on, the problem will still be there. Quebecers are going to continue to elect separatist governments and to send separatist MPs to the House of Commons. This is a non-policy. Has the government thought it over? What is going to happen the day after a referendum? Nothing. No negotiation? Three million Quebecers disappear?

[English]

• (1600)

**Senator Boudreau:** First, with respect to my comments about Quebecers not understanding the consequences, I was quoting a study done by a professional, as I think I indicated at the time I made the comment. I suspect that Quebecers on both sides of the question did not clearly understand what the result of their vote would be. That is probably not unusual. In any event, I was quoting a professional who made a study after the fact. That was his conclusion. It is clear that we have an interest in ensuring that the question is absolutely clear. I do not think the honourable senator would disagree with that.

I agree that legislation alone will not preserve the unity of a country. He is quite right. However, in this case, legislation will clearly ensure that if a referendum question is to yield negotiations, it must be put clearly. I believe that in those circumstances the people of Quebec will give a very clear answer.

[Translation]

**Senator Rivest:** I understand that point of view but, without going further, I am telling you that I also want Canada to remain united, and so does everyone here. However, I strongly object to the government's policy on national unity. It is a very ill-advised policy, and that includes this bill and many other things.

Several federalists in Quebec have challenged that policy, which could mislead Canadians. Among others, the Liberal Party president in the riding of Berthier—Montcalm objects to Mr. Chrétien's leadership. This is not because he does not appreciate him, on the contrary, but because, like many other federalists in Quebec, he expects another policy.

As for the clarity of the referendum question, if you conduct a poll in the rest of Canada, you will see that the overwhelming majority of Canadians believe that, with this bill, the next referendum will necessarily be on secession. This is what the Prime Minister said. You are telling us that the bill does not say that — for us it is easy to understand, because we do a clause-by-clause reading of the bill. The day after the Parti Québécois asks its question, if there is another referendum, what will Canadians say? "Again! Mr. Chrétien lied to us. We thought the question would be on secession, when in fact it is on sovereignty-association".



You will adversely affect Canadian unity with this bill. This is very bad legislation. Some federal Liberals think so.

[English]

Many members of the federal Liberal Party in Quebec are saying exactly the same thing as I said.

[Translation]

**The Hon. the Speaker:** Honourable senators, I remind you that questions are allowed after a speech, but there can be no debate.

[English]

**Hon. Douglas Roche:** Honourable senators, the heart of this bill is the determination of clarity with respect to the question, and the strength of the majority. If the government gets what it wants on a process to determine clarity, would it be open to an amendment clarifying which political actors will make this determination? Would the government be open to an amendment stating that the political actors in the determination of the question and the strength of the majority are the Parliament of Canada, which includes the Senate?

**Senator Boudreau:** I respect the honourable senator's point of view on that issue. However, the legislation is clear. There is no confusion about the body that is required to give such a view, and that is the House of Commons. The honourable senator may disagree and say that in his view that is not appropriate, but it is quite clear in Bill C-20. As I said, the rationale is that in seeking to prescribe its own area of normally unfettered activity, the executive is seeking to prescribe it in the way the bill suggests. It is giving the House of Commons a veto over the process moving forward, but it has not contemplated offering that veto to the Senate as well.

**Senator Roche:** Honourable senators, if the government is not open to an amendment stating that a political actor in this situation includes the Senate, would it be open to at least raising the Senate to a discrete category, as opposed to lumping it in with other bodies, as is done in clause 2(3), so that the Senate would be seen, as part of Parliament, to have a special role in the determination of the clarity of the question and the strength of the majority?

**Senator Boudreau:** Honourable senators, the players now involved along with the Senate in the requirement of consultation and expression of opinion are very important players. They include the provinces, the Senate, and now, with the amendment, the aboriginal peoples. I believe that the requirement as currently set forth is very significant. The bill will proceed in the normal course and further discussion will be held, but my view at this stage is that the role of the Senate, as it is clearly defined now, is the one that will likely remain.

**Senator Roche:** I did not say that the other bodies named are not important players. Of course they are important players —

the aboriginals, the provinces, and so on. My question is whether it is true that the Senate, as a constituent body of the Parliament of Canada, is in a more elevated position, one would even say a supreme position. The Parliament of Canada is supreme and we are part of Parliament.

At the heart of the issue of who will determine the clarity of a referendum is the fact that through this bill, the Senate has been downgraded.

• (1610)

Thus, I am asking again — and I put this to the minister respectfully and sincerely: Would it not alleviate the genuine concern that is found in the chamber, to lift up the Senate from its present listing with other bodies into a discreet assembly in this bill?

**Senator Boudreau:** Honourable senators, I must confess that I am not exactly certain as to what the honourable senator has in mind. Perhaps we will have an opportunity to discuss that at greater length. If he means that the bill should be rearranged so that the Senate would have a veto over the process, then I would suggest that that is unlikely. It might be useful for us to have a discussion on this point so that I could better understand what the senator has in mind.

**Hon. Anne C. Cools:** Honourable senators, the minister has said some interesting and very novel things about the Senate today. When we had our celebrated GST fight in this chamber, it was our clear understanding at the time that were the Senate to defeat the GST, it certainly would have resulted in the dissolution of Parliament, or at least the resignation of the government. Not only did we believe that, but the government of the day believed that, and so did Mr. Mulroney and our leader, former senator MacEachen. My recollection is that the government used every means at its disposal to ensure that the GST was not defeated because a defeat in that instance would have meant a defeat of the government. The Leader of the Government in the Senate is clearly wrong when he articulates the position of the Senate in our Constitution.

Somehow, within these debates, honourable senators, we must find a way to crystallize the role of the Senate in general, outside of a debate on this bill. It puts many people in a difficult position. That was just by way of introduction to my questions.

I come now to my first question. The Leader of the Government cited clause 1(3), which says that the House of Commons shall consider whether the question would result in a clear expression of the will of the population, and on and on. He has told senators here quite clearly that the position of the Senate, constitutionally and politically, is not the same as the House of Commons. The clarification I am looking for is this: Is it not fair to say that, in our constitutional system, the opinion of the House of Commons is the same as the opinion of the Government of Canada?



**Senator Boudreau:** Honourable senators, that may or may not be the case. It depends, I suppose, on many circumstances. I could certainly imagine a set of circumstances where the opinion of the House of Commons might not be the opinion of the government. One thinks particularly of minority situations. The view that I have expressed is that, if we ever get to this horrible circumstance that none of us wants to see or perhaps even believes we will ever see, the Senate will play a significant role, but it will not have a veto over the process. I admit that freely, and that is the difference between the two houses in this case. The House of Commons, in effect, will have a veto over the process; the Senate will not have a veto over the process. That is exactly the same situation that exists for any formal constitutional amendment.

**Senator Cools:** What I was attempting to clarify was the relationship between the House of Commons and the Government of Canada. I was looking for some commentary on that particular, narrow issue. The scriptors of this bill would know very well that the opinion of the government is the opinion of the House of Commons and that that fact alone would be of critical importance to those who are looking into the future to be able to predict political outcomes. I have no doubt that any vote of the House of Commons on the initiative of the government would be under the party discipline of the whippers, or the whips as we now call them. That is a question, honourable senators, that has not been addressed. This is a method of obtaining a single opinion. It is a shortcut to a single opinion.

My second question has to do with political actors. Earlier in his remarks, the honourable leader spoke about elected representatives, and I believe it was Senator Kinsella who brought forth the entire question of elected representatives. The term "political actor" is a term that the court has created. It is unknown to law and it is unknown to the Constitution of Canada, let us understand. It is a specious term. That is another point. I am not a political actor, ladies and gentlemen. When I stand on the floor of this chamber, I am a parliamentarian.

**Some Hon. Senators:** Hear, hear!

**Senator Cools:** When I go out to speak to individuals on a political basis, then I am a political person. An elementary reading of the Supreme Court of Canada judgment tells us that the use of the term "political actor" cannot be an accident. If the court had wanted to put clarity into the situation, the court would have spoken about the participants of the process in this country, which are the Queen or the Crown and the House of Commons and the Senate. The court, therefore, has not contributed to clarity.

Since the court has said that these questions of secession are questions to be considered by the so-called political actors and elected representatives, which you have then interpreted to mean an exclusion of the Senate because the Senate is not elected, my question to the honourable leader comes to be: How and where does the Supreme Court of Canada obtain the authority to make these political determinations that it has made in respect of the

opinions that it has given us on the process and the method for secession, after having first told us that there is no law for secession and that the Constitution of Canada does not countenance secession?

How can the court use the standard that non-elected persons cannot make these determinations, when the court, in and of itself, has made a political determination, and when I last checked, the court itself was unelected?

**Senator Boudreau:** Honourable senators, it is difficult to conceive, but the court could have drafted a piece of legislation and included it as an example of how they might have thought things should work. They did not choose to do that, and I think that was a wise choice. They gave their opinion at the request of the Government of Canada. I think that is a legitimate thing for them to do.

By the Government of Canada choosing to do what they have done, choosing to put a prescription on their own normally unfettered ability to negotiate, I think it is incumbent upon them to be consistent with the opinion. They are not lifting the provisions of the legislation out of the judgment. The court did not write the legislation. However, the government believes — and I believe — that the legislation that has come down is consistent with the opinion given by the court in all respects. Whether or not you believe that it is good policy is another issue. Whether you believe that the Government of Canada should have limited the veto to the House of Commons or whether you believe they should have also extended that right of veto to the Senate, that is an issue of policy. They chose not to do so. There is a rationale for that, which I expressed in my remarks earlier. It does not, in any way, take away from the authority that the Senate of Canada currently enjoys.

• (1620)

The Senate will play a major role under this legislation, if and when the time ever comes. Others may have written the legislation differently, to include other bodies, but, essentially, the House formalizes a veto over executive action, which the House of Commons has on a day-to-day basis, as a practical matter. That is what we call responsible government. They have that veto; we do not. At the end of the day, that is the justification that I would offer.

**Senator Cools:** If the court has said that there is no law by which to guide secession, then what is the law on which the government is basing its actions in bringing this bill?

**Senator Boudreau:** It is a judgment. First, it is based on, reflective of, and consistent with the opinion offered by the Supreme Court. It is based on the executive's decision. The executive has made a decision to prescribe their rights in this particular way. It is within their authority to do that. We have had some discussions constitutionally as to whether that is appropriate. In my view, it is. They have decided to act in this way.

Under the circumstances, on this very important issue — both in my earlier remarks and now in my responses to questions — I would ask all honourable senators to give that position thoughtful consideration.

**Senator Nolin:** Could the minister quote to me the paragraph of the decision where the Supreme Court is advising the government that it should legislate? The government asked for an opinion of the court. Can the minister tell me where the court states that, because he used that in answer to my colleague, Senator Cools. In which paragraph does the court state that?

**Senator Boudreau:** I said that the legislation is based on the opinion that the government received. It is consistent with the opinion, and I believe that to be the case. I challenge the honourable senator to indicate otherwise — that is, to show where the opinion is inconsistent with the action that an executive has chosen to take once they received an opinion that they requested.

**Senator Kinsella:** The honourable senator has devoted a fair amount of his speech to his theory of the place of the Senate of Canada under our system of governance. In my limited experience in this place over the past 10 years, it has been my understanding that one of the ways in which the Senate of Canada relates to the executive is through the office of the Leader of the Government in the Senate. The government communicates to this house through the Leader of the Government. It has been my experience in these past 10 years — and I have consulted with people who have been here longer than I, and it is their experience also — that, typically, the Leader of the Government in the Senate also sees his or her role as the conduit the other way as well.

I understand cabinet confidentiality and know that the government leader would be somewhat constrained in any reply. However, I must ask: Did he make representations on behalf of this institution as this process was coming forward, a piece of legislation that would relativize this institution?

**Senator Boudreau:** I fully agree with the honourable senator that the role of the Leader of the Government in the Senate is to be a conduit in both directions. I certainly believe that I have discharged that responsibility. It is my hope that I will continue to discharge that responsibility.

[Translation]

**Senator Rivest:** Honourable senators, to show how ludicrous this bill is, I should like to suggest two scenarios. If the referendum question were “Do you want Quebec to become an independent state?” — the goal is to avoid confusion, is it not? — and that TV ads, billboards and sovereigntist speeches everywhere proclaimed that yes, Quebec would be an independent state, but with an economic and political association, but that it did not say so on the ballot, would that be legal? What appears on the ballot is important, but if Quebecers

were told that what was being sought was an independent state, but with an economic association, they would be just as confused.

Here is another scenario. If the question were on sovereignty-association, which according to the bill is inappropriate and would lead to a refusal to negotiation, but 70 per cent of Quebecers voted yes, how long will you be able to hold out?

[English]

**Senator Boudreau:** Honourable senators, the wisdom of the Supreme Court opinion is that these issues will be judged when they occur and that they will not be prejudged.

The fundamental responsibility of the Government of Canada is to ensure that the actual question put to Quebecers, if it is to lead to negotiations, is unequivocal and does not list an entire series of options. That is to say, it should not be like a menu. Pick the one you like, but no matter which one you like, if they all add up to a majority, then we are on our way to separation. I do not think that is how a clear expression of will can come about.

The arguments that the honourable senator makes differ to some extent from other arguments and other concerns that have been raised. From the arguments that the senator raises, I gather that he would be opposed to the whole idea of a bill of this nature coming forward in any event.

**Senator Rivest:** Yes.

**Senator Boudreau:** I thank the honourable senator for that clarification. We can discuss the issues differently, but when the Leader of the Opposition in the Senate rises, I hope he will share with us whether or not that is the position of the opposition here.

**Senator Rivest:** I disagree totally with this bill because I agree with former prime minister Pierre Elliott Trudeau. We must undertake a political battle in the referendum, not with a bill. It is completely irrelevant. Do the job. Pray for Canada! Plead for Canada and for Quebec! This is a political question, not a regular question.

**Senator Boudreau:** I agree that the people of Quebec will make the decision to stay in Canada — not because of any piece of legislation, but because they choose Canada. Our responsibility will be to ensure that the choice is clear.

**Senator Lynch-Staunton:** Honourable senators, I voted in those two referendums. I do not think I was confused as to what I was doing. I agree that perhaps the question could have been a little clearer. However, I can assure the Leader of the Government that no one who voted was confused as to what was at stake, which is why the vote was so high in both cases. Word the question any way you wish. When one votes in a separatist-sponsored referendum, one knows what is at stake. We knew what was at stake. There was no confusion.



• (1630)

I resent, as do those who voted, the implication by a smart academic somewhere that the question was vague and therefore no one understood it. I do not accept that. I think an apology or some kind of clarification is needed; otherwise, the millions of Quebecers who voted to stay in Canada, as well as those who felt they would be better off elsewhere, will be offended. They knew what they were doing and what their vote meant.

**Senator Boudreau:** The Leader of the Opposition gives me a clear opportunity to say that in no way did I intend to offend anyone who voted in the referendum. The study I cited was quoted in the other place. It indicated that some people were confused about the consequences of their vote. I cited that study from that point of view. However, I certainly did not mean to cast any reflection on the people who voted.

**Hon. Joan Fraser:** Honourable senators, is the government leader aware that not just one poll by Professor Pinard — one of the most eminent political scientists in the country — but dozens of opinion polls taken over a generation have shown consistently that approximately 20 per cent and sometimes as many as 30 per cent of the people who vote Yes or who say they would vote Yes if a referendum were held are, in fact, in a state of confusion about what sovereignty association would mean? It is my view that this does not in any way constitute an insult to Quebecers. It is a simple scientific fact. Every polling house that has ever asked the question has found that a fraction of voters in Quebec are confused about this issue. I blame that not on Quebecers, who I think are among the most sophisticated voters anywhere, but on the political party that has done its very best to maintain that confusion. Is the leader aware that there are many such studies?

**Senator Boudreau:** No, I am not. However, I thank the honourable senator for bringing them to my attention.

I have had the opportunity to read the question to any number of Nova Scotia voters, and those to whom I read it were confused as to what the consequences of the vote might have been.

[Translation]

**Senator Rivest:** Honourable senators, I am in complete agreement with our colleague. It is true that several studies have shown this. The Parti Québécois, regardless of this bill, will continue to promote sovereignty-association. Confusion will remain. This bill does not settle the issue. It is bad policy. The problem for national unity is not the question, but the hearts of the men and women of Quebec who vote for sovereignty. We have to convince these people to remain within Canada. The question is not the problem. We are not dealing with 50 cranks.

[English]

We are talking about millions of decent people voting for sovereignty. We must convince them to stay in Canada, but

certainly not with tricky bills of this kind or little things that mean nothing in respect of the problem. That is my point.

**Senator Boudreau:** I thank the honourable senator for his comments. As I have said before, I could not agree more that we need, on an ongoing basis, to convince individual Quebecers that they should remain in Canada. Those of us who live outside the province should take that responsibility seriously. I believe, given the clear choice, that Quebecers will in every instance choose to remain in Canada, particularly if we succeed in the kind of effort to which the honourable senator refers.

On motion of Senator Lynch-Staunton, debate adjourned.

## NATIONAL DEFENCE ACT

### BILL TO AMEND—SECOND READING—DEBATE ADJOURNED

**Hon. Landon Pearson** moved the second reading of Bill S-18, to amend the National Defence Act (non-deployment of persons under the age of eighteen years to theatres of hostilities).

She said: Honourable senators, I realize I am not the person you might expect to sponsor an amendment to the National Defence Act. However, the short clause that the government is proposing to add to the act holds particular significance for me, as it represents Canada's commitment to address, in an appropriate and constructive way, the growing exploitation in too many parts of the world of children as soldiers.

In the Speech from the Throne, the Government of Canada pledged to give increased prominence to human security in its foreign policy. Civilians have always been affected by armed conflict, but it used to be that most of the time they were the unintended, if inevitable, victims of military engagement. Now, they are frequently the targets of both state and rebel forces. Basic human rights are ignored. Women and children are especially vulnerable.

In 1996, Graça Machel, a distinguished African activist, the widow of the former president of Mozambique and now the wife of Nelson Mandela, reported to the United Nations on the devastating price paid by war-affected children during the preceding decade. Nearly 2 million children were killed and more than 4 million were disabled. One million were orphaned and over 10 million were left psychologically scarred by the traumas of violence against them and their families. This is to say nothing of the millions who had become refugees or were internally displaced.

Today, an estimated 300,000 child soldiers are serving, often against their will, in regular armies or as guerrilla fighters, members of rebel militia or rogue groups like the Lord's Liberation Army in Uganda.



These children are armed with guns that are light enough for an eight-year-old to carry and shoot, or with machetes sharp enough to slice off arms and legs. When they are not being made to kill or maim, they are being used as spies or as mine layers or as virtual slaves, forced to serve the physical and sexual needs of their leaders. This is the terrible reality we face.

While the problem is global, the worst concentration of child soldiers is in Asia and Africa. The Coalition to Stop the Use of Child Soldiers estimates that in Africa alone some 120,000 children under the age of 18 are participating in armed conflicts.

Honourable senators, I am pleased to say that since the Machel report brought this appalling situation to the attention of the United Nations, the international community has been moving to address it. One instrument that is being used is the UN Convention on the Rights of the Child, which was adopted in 1989 and ratified by Canada in 1991. This convention set the standard for voluntary and compulsory recruitment in the armed forces and participation in hostilities at 15 years of age. Right from the start, there were concerns that 15 was much too young, particularly since the convention's definition of the child for whom protection is required is "every human being under the age of 18."

In 1994, the UN Commission on Human Rights established a working group to draft a protocol to the convention to raise this minimum standard. I am happy to inform all senators that the international community has recently reached a consensus on the text of an Optional Protocol to the Convention on the Rights of the Child to achieve this objective. Under the terms of this protocol, the minimum age for compulsory military recruitment into the armed forces of state parties will be set at 18 years of age.

In addition, states parties who ratify the protocol will commit to taking all feasible measures to ensure that members of their armed forces under 18 do not take part in hostilities; and where persons under the age of 18 are recruited, joining the armed forces must be genuinely voluntary, done with parental consent and reliable proof of age and under circumstances where the recruit is aware of the duties involved with military service.

• (1640)

Finally, the protocol urges all states/parties to cooperate in ensuring that the victims of acts contrary to the protocol — that is, children who have been forcibly engaged in conflict — should receive appropriate assistance for their physical and psychological recovery.

The optional protocol will be presented to the United Nations General Assembly this year. Following this, nations will be in a position to ratify the protocol, later this fall it is hoped.

Honourable senators, having followed this issue closely for some years, I am proud to say that Canada has been a leader in working towards this optional protocol and that the government fully supports the outcome. I am also pleased to say that current

policies of the Canadian Forces are already compliant with its provisions.

Canada does not practice conscription or any other form of compulsory service. However, the Canadian Forces do enrol members voluntarily who are under 18. Approximately 1,000 16- and 17-year-olds are recruited annually. The majority of these serve in the reserves, with some in the regular force, principally those attending Royal Military College.

These young Canadians are given a valuable range of educational experiences. Their leadership courses expose them to accountability and ethics. Their training imparts valuable skills, such as fire-fighting, basic medical skills and mechanics. A number of them have the opportunity to parade daily on Parliament Hill during the summer as part of the prestigious ceremonial guard.

Honourable senators, being able to recruit capable young Canadians is vital to ensuring that the Canadian Forces continue to be highly professional and well respected. A career in the armed forces is an honourable one, not only for the defence of our country and to fulfil our international treaty obligations, but also for the protection of human security abroad, a task that I predict will grow as our troops are increasingly sought out as peacekeepers. However, attracting and training those who are under 18 does not include sending them into danger. Current Canadian Forces policy precludes members under 18 from participation in hostilities or deployment to hostile theatres of operation.

Our recruitment practices already comply with the provisions of the optional protocol. However, entrenching this policy in legislation, as the government's proposed amendment to the National Defence Act is designed to do, will strengthen our position as a leader on this issue. When it comes to the exploitation of children as soldiers, Canada has never been part of the problem. We believe that if you are not old enough to vote a Canadian government has no right to send you off to war.

The Government of Canada is intent on making it clear to the international community that our refusal to send children to war is not merely a matter of conviction and policy; it is actually against the law of Canada.

Canada's overarching objective is to promote and protect the welfare and the rights of war-affected children. Although a great deal remains to be done, we are making progress. Next September we will host a major international conference to design clear strategies to address the issue and to generate the necessary political will.

Honourable senators, I encourage you to support this short and simple amendment to the National Defence Act as a way of sending a clear and strong signal of Canada's support for the optional protocol and its commitment to continue leading the fight against the abuse of children as soldiers.

**Hon. Senators:** Hear, hear!

On motion of Senator Kinsella, for Senator Meighen, debate adjourned.

[Translation]

## CANADA ELECTIONS BILL

### SECOND READING—DEBATE CONTINUED

On the Order:

Resuming debate on the motion of the Honourable Senator Hays, seconded by the Honourable Senator Adams, for the second reading of the Bill C-2, respecting the election of members to the House of Commons, repealing other Acts relating to elections and making consequential amendments to other Acts.

**Hon. Donald H. Oliver:** Honourable senators, the size and scope of this bill make it rather remarkable. It is over 250 pages long and contains close to 600 clauses. It would be impossible for me in one day, or even several, to do it justice. Therefore, with your indulgence, I will limit my remarks to one aspect of the text, third-party advertising.

To put this in context, I would remind honourable senators that it was in 1974 that the Trudeau government first passed legislation prohibiting certain forms of independent election advertising. Ten years later, the National Citizens' Coalition challenged these restrictions in an Alberta court and won. Because the federal government decided not to appeal the ruling, the 1994 and 1998 elections were held without any advertising restrictions. In 1992, the Royal Commission on Electoral Reform and Party Financing, the Lortie commission, recommended that these restrictions be restored. As many senators know, I was a member of the Lortie commission, as was my friend, Senator Pépin. The Mulroney government took note and, the following year, the Canada Elections Act was amended to include a ceiling of \$1,000 on independent advertising expenses. Again, the National Citizens' Coalition challenged the legislation before an Alberta court. In 1996, the provincial Court of Appeal found the limit unconstitutional in *Somerville v. The Attorney General*.

Moreover, Quebec courts were faced with a similar case. Robert Libman, the leader of the Quebec Equality Party at the time, was challenging the Quebec Elections Act. He deemed unacceptable the provisions limiting the right of unaffiliated or independent individuals to participate in a provincial referendum. The case was to go right up to the Supreme Court, which handed down its ruling in 1998. What is of interest to us here is that the court made a wholly unexpected reference to the *Somerville* ruling, indicating its disagreement. It stated as follows:

[English]

While we recognise their rights to participate in the electoral process, independent individuals and groups cannot be

subject to the same financial rules as candidates or political parties and be allowed the same spending limits. Although what they have to say is important, it is the candidates and political parties that are running for election. Limits on independent spending must therefore be lower than those imposed on candidates or political parties. Otherwise, owing to their numbers, the impact of such spending on one of the candidates or political parties to the detriment of the others could be disproportionate.

In the wake of this ruling, the present government decided to reintroduce the third-party clauses we have before us in this bill.

Very briefly, honourable senators, these clauses state that third parties will be allowed to spend up to a total of \$150,000 during an election. This includes a maximum of \$3,000 in any given electoral district. Any third party that spends over \$500 will have to file a report listing its advertising expenses and contributions. This report must include the names and addresses of everyone who contributed more than \$200. Third parties who wish to spend in excess of \$5,000 on advertising will be required to appoint an auditor. Under no circumstances will third parties be eligible to issue tax receipts, nor will they be reimbursed for expenses. And like political parties, they will be prohibited from advertising during the final 48 hours of a campaign.

• (1650)

This whole issue has provoked quite a bit of comment in the media and elsewhere. Once you separate the wheat from the chaff, you can see that most of what has been said centres on a few deeply held beliefs. Many of these beliefs are positive in nature. For example, all people have an equal right to compete for high office; freedom of speech is one of our most sacred rights, and freedom of association must not be unduly infringed upon. At the same time, and unfortunately so, there are some negative assumptions that work as well. Some of these are the notion that wealthy Canadians never act in the best interests of the country, that business involvement in politics inevitably leads to corruption, and that elections and electorates can be bought by sufficient expenditures of money.

[Translation]

Honourable senators, I am totally in agreement that everyone ought to be able to aspire to the high office of an elected member of Parliament. I also agree, as I am sure you all do, that it is imperative to protect our right to freedom of speech and freedom of association. I do, however, find it totally unacceptable that business is seen as the devil incarnate. I do not believe that the connection between funding and votes obtained is a clear one. The election that was fought over free trade is proof of this. One might say the same of the Charlottetown referendum. If I remember correctly, those in favour of the referendum spent 13 times as much as their opponents. And yet, we know what happened.



The provisions in the bill relating to third-party advertising raise some important issues. For example, in a democratic society, is everyone entitled to take part in electing a government, or are there some exceptions? Is it acceptable for a society or a government to restrict the activities of certain groups, such as third parties? Are such limitations a threat to democratic principles?

[English]

There are no easy answers to these questions. As those of you who have been following the debate probably already realize, this issue pits two opposite and perhaps irreconcilable philosophies against one another. On one side are proponents of the idea that elections are a time of free public debate, that everyone should participate and should be allowed to do so to the full extent of their abilities and capacities. On the other side are those who are equally convinced that unfettered free speech during electoral periods inevitably leads to abuse, distorts the electoral process, and is fundamentally anti-democratic, and that society and government have a duty to minimize such abuse by limiting opportunities where it can occur. That, in a nutshell, honourable senators, is what we will be debating when we consider the third-party clauses of this legislation.

In the coming days, we will hear a number of arguments for and against third-party advertising. As we listen to them, it behoves us to keep four simple questions in mind: Are spending limits on third parties needed? If so, are they justified? If they are, are the ones that this bill proposes fair? Will they do the job they were designed to do?

Supporters of the idea of restricting third-party advertising will base much of their case on the notion of fairness. They will claim, for example, that the present situation is inequitable, that it limits the expenditures of political parties but allows third parties to spend whatever they wish. They will also insist that regulating third-party spending will make for a more level playing field. They will also say that restricting third-party advertising will ensure that the electoral process is as transparent, democratic, and fair as possible. The more radical among them will go even farther. They will suggest that third parties in fact have no right and no business trying to influence the public agenda, and so they should be banned.

Clearly, honourable senators, transparency with regard to those who donate money to influence the political process is a necessity. Secrecy in this area does nothing but undermine public confidence. However, I am not entirely satisfied that spending limits will automatically lead to a level playing field. As it stands now, third parties can spend more than political parties. All this legislation does is reverse the tables. This is good for the parties, but it does not make the field any more even. As for the idea that

third parties have no right to involve themselves in elections, I disagree completely, and I think we all should.

As you can well imagine, opponents of third-party restraints have their own arguments. Some of the most trenchant of these have been expressed, and not surprisingly, by the National Citizens' Coalition. They argue, for example, that third-party clauses infringe on the right of Canadians to cast an informed vote and that, equally important, they unduly restrict the freedom of association and expression. These are guaranteed by section 2 of the Charter, which states that every Canadian has the following fundamental freedoms: freedom of conscience and religion; freedom of thought, belief, opinion and expression, including freedom of the press and other media of communication; freedom of peaceful assembly; and freedom of association. Clearly the clauses in question do infringe on these rights, as the courts in Alberta have said twice, by declaring spending limits unconstitutional.

Another criticism of this bill that we will hear, honourable senators, is that limiting third parties to a maximum expenditure of \$150,000 is punitive. It will all but eliminate them as serious contenders in the battle for public opinion during elections. I must say that I tend to agree with this. A \$150,000 limit is unquestionably far too low. In fact, I think it is just plain unrealistic. Look at the math. Divide \$150,000 by 301 ridings. That equals a little less than \$500 per riding. You cannot buy much advertising space with that.

According to Elections Canada, political parties spent close to \$35 million during the last election, and that is just the official figure. Fifty-five per cent of that \$35 million was spent on advertising, particularly television advertising. By my calculation, 55 per cent of \$35 million is \$19.25 million. When you compare that to what is being proposed for third parties, it is obvious that their voices will be faint indeed.

Of course, none of this includes the huge amounts of money spent by parties in power on things like government and departmental advertising, and taxpayer-funded householders mailed conveniently just prior to the writ being dropped. Nor does it take into account the unaccounted-for moneys given to parties through riding associations or the untold hundreds of millions of dollars funnelled into Liberal ridings thanks to the largesse of the Human Resources Development minister.

• (1700)

The disparities the third party clauses will engender give rise to the very real possibility that people will collude in order to get around them. The Chief Electoral Officer believes the provisions in the bill prohibiting collusion are adequate, but the Assistant Chief Electoral Officer has already admitted that the rules governing collusion are evolving. Before a committee in the other place, she said, "We will feel our way through our first prosecution." In other words, no one really knows what will happen, but just in case and just to be sure, we will infringe on the right of Canadian citizens to freely associate with one another during election periods.



Honourable senators, whatever position one takes in this debate, it is clear that third parties' ability to participate in elections will be impaired. They will not be shut out, but their activities will be seriously curtailed. How ironic that here we are as politicians telling Canadians they cannot spend their money as they wish during elections, and yet we do just that very thing — and using their money to boot!

This past weekend, I looked through some of the debate and committee testimony in the other place. I was hoping to find some evidence that third party advertising proffers unfair advantage during elections. However, there was a veritable dearth of quantitative evidence. One committee member repeatedly asked witnesses, including the minister responsible and the Chief Electoral Officer, to provide him with concrete examples of abuse. His question was something like this: "Can you tell me of any instance where candidates or parties were unable to properly defend themselves against third party advertising?" He never received an answer, or at least an answer that replied directory to his question.

Thus, I was left to ask myself: If there were no facts, why is the government pushing forward with these restrictions, especially in light of the different court decisions? What is fuelling all the rhetoric and the allegations? Why are we being told that third parties are bad and their involvement in elections unfair and dangerous? From what I can see, the answer is fear — fear of exclusion and fear of losing.

There appear to be three reasons for this. First, there is a belief out there that third parties are multinational companies armed with untold buckets of cash and that they are poised to defeat any candidate unwise enough to incur their wrath. Second, there is an assumption that all third parties are somehow evil. They are the bad guys out to ravage and slay the damsel of democracy. The idea that they could possibly have some sort of salutary effect on elections is dismissed out of hand. Third, there is an apprehension that without some form of regulation of third parties, Canadian elections will become U.S.-style elections — only the rich and well-connected will need bother to apply. Each of these fears is in turn heightened by a feeling that third parties can make or break a candidate in close elections. This has never been proven. That appears to be irrelevant. The government has decided nonetheless to reimpose spending limits — and this, as I said a moment ago, in spite of the fact that two courts have declared such limits unconstitutional.

Honourable senators, I must say that I find this somewhat troubling. It seems to me that, at its most fundamental, a democracy is about people, the rule of the people. It is about electing citizens to govern other citizens. This basic truth, if I may call it that, appears to have been jettisoned in this bill or, at any rate, it has been lost from sight.

There is a presumption among both the framers of this bill and those whose comments I have read so far that politics equals political parties. Political parties, so the argument goes, are the only valid and legitimate vehicles for the expression of political opinion. The views of political parties, their agenda and their spin on events should predominate. Third parties, if they have any role at all, should be limited to providing input to the political parties. In other words, they should be denied any direct connection to the electorate by way of advertising.

This view of the world is based on the idea that our democracy is hierarchical. The politician and the political parties are at the top. Then come the third parties, and at the bottom of the pile are the people. Surely, this is a strange way to view democracy. In fact, it seems to me to be a corruption of the very meaning of the word. To my mind politics is a forum. It is an occasion for a wide-ranging discussion of national issues involving all citizens. It is not a series of private debates between politicians.

We often hear today that people are turned off of politics. If the truth be known, I do not think we have to look much further than this bill to begin to see why.

[Translation]

Honourable senators, in our duties as parliamentarians we often refer to people, in the widest acceptance of that term. We extol the virtues of freedom of speech and democracy. We praise the charter and so on. Yet, we have before us today a bill which, in many respects, undermines the ideals that we love to praise. We want to deprive Canadians of some information, on the pretence that it would be biased, this at a critical stage of the democratic process, that is during an election. We are saying to Canadians that, because certain oral or written comments could have an impact that we are not in a position to control, we believe these comments should be restricted. Do we have the right to do that? Are elections the exclusive domain of politicians? Are young people asking us to think for them? Do they need us to tell them what is good or bad for them to hear?

I believe we must do everything we can to generate a public debate. It seems to me that the purpose of an electoral process should not be to restrict the voters' ability to participate. It should be the exact opposite. New ideas and differences of opinion are the two foundations of a sound and tolerant democracy. If we want people to participate — the participation rate is the lowest in 30 years — we must not raise barriers. We must stop wanting to control every aspect of the electoral process. With our habit of wanting to control everything, we have rendered elections meaningless. All that is left are short comments, clips and pseudo-debates. It is no wonder that people have lost interest.

[English]

Honourable senators, the real issue here is not simply should we cap third-party spending. It is about democracy and the type of society in which we wish to live. As we debate this bill, we should be asking ourselves things like: Which poses a greater threat to our democracy, third-party advertising or legislation that all but eliminates it? Do citizens have the right to hear all viewpoints during an election? Will this bill limit people's ability to make informed decisions? As well, we should be keeping in mind that third-party advertisers have the same rights as every other Canadian. Before restricting their rights to freedom of speech and association, we owe it to ourselves to examine the facts. This is particularly so in the case where the facts appear to be in such short supply.

• (1710)

Finally, honourable senators, as a chamber of sober second thought, we have a duty to offer protection, or at least a hearing, to those whose rights have been ignored or trod upon by others. We have an obligation to allow them to be heard and not to be unduly swayed by critical or partisan debate.

Over the past few years, the Senate has performed this role on a number of important occasions, including the Pearson airport legislation, the firearms registry, the employment insurance bill, the Divorce Act, Term 17, and the Harmonized Sales Tax Act in the Maritimes. This bill offers us a similar opportunity and a similar challenge. Like the devil in the Bible, we have heard much criticism of third-party advertisers, but we have heard relatively little, if anything, from the accused.

I hope that honourable senators will seize this opportunity to offer these people the opportunity to have their voices heard in a spirit of open-mindedness worthy of this chamber. We could all benefit, I think, from a frank exchange of views on this subject. It would go far to replacing some of the heat that has been generated by a little more light and understanding.

**Hon. Senators:** Hear, hear!

**Hon. Dan Hays (Deputy Leader of the Government):** Honourable senators, I wonder if I might have permission to ask Senator Oliver a question.

First, I wish to congratulate him on a thorough speech. I also wish to congratulate him for delivering portions of his speech in French. I have a question, however.

As I listen to the honorable senator, I sense that his position is that the current situation is the preferable one, namely, that third-party spending is fine the way it is and it should be unlimited.

**Hon. Norman K. Atkins:** No.

**Senator Hays:** Senator Atkins is signalling me that I am wrong on that, but if that is the case, how do you justify limits on spending by political parties during the electoral period? If you

have a figure in mind for limits on third-party spending, then how do you relate it to spending by political parties? In other words, are the two comparable?

My first question is: If you have no limits for third parties, should political parties have no limits? Second, if you have limits, then what is the relationship between third-party spending and political party spending during the writ period?

**Senator Oliver:** I wish to thank the honourable senator for his questions. It is my view that this particular bill is wrong in relation to the treatment of third parties. It is my opinion that it is wrong because it limits them to an amount of \$150,000. In this day and age, given what it costs to buy advertising, to do polling and other important things during an election, during the writ period, that is an inadequate amount of money. In my opinion, it is punitive.

I am aware that the honorable senator cited in his speech the same quotation from the court that I did, and that is only *obiter dicta*. If the government is to rely on the *obiter dicta* of one court to bring in a bill, surely it should be fair to third parties. I see third parties as groups other than the National Citizens' Coalition. I see them as community groups, and other groups in all of our provinces and all of our constituencies, who would like to have an opinion and be able to speak out on major issues that arise during an election. For us to limit those groups that may have national import to \$150,000 is unfair.

I will be asking questions of witnesses in committee. Perhaps as a result of that I will come up with a figure larger than the \$150,000 figure. The figure should be substantially larger in order to be fair.

**Senator Atkins:** As someone who has run two national campaigns, I have seen third-party advertising and support work both ways. My question to Senator Oliver is: Does he think that contributions to third parties take away from contributions to registered parties?

**Senator Oliver:** I do not know the answer to that, but I suspect that there are some people who do not contribute to political parties at all, and some of those people will contribute to certain third-party organizations. So, no, I do not think that takes away from money being given to third parties.

**Hon. B. Alasdair Graham:** Honourable senators, during the course of his well-researched presentation, Senator Oliver used the word "multinational". In response to a question from Senator Hays, he spoke about "third-party community-based organizations." I think we are all sensitive to that particular point.

Senator Hays also asked a question with respect to the relationship between the contributions that might be made by so-called third-party organizations and the caps that may be imposed upon political parties. Would Senator Oliver suggest that the multinationals to whom he referred might have unfettered, uncontrolled spending opportunities in the period of an election campaign leading right up to election day?



**Senator Oliver:** Yes. Banks and other major financial organizations have lots of money that they can give to major political parties. However, as a result of questions put in the other place to both the minister and the Chief Electoral Officer, they were not able to give any evidence of damage and harm that that has brought. That is why the two decisions of the Supreme Court found that it was unconstitutional.

Senator Atkins has served in two campaigns. I have been the lawyer for six national campaigns for the national PC Party. My job was to deal with election expenses and election law. I travelled across Canada on several occasions giving lectures on the law in relation to election expenses. That was my job for 26 years. I am not afraid to have all people of Canada participate in the political process because I think that is extremely important. I have seen few cases where money alone can buy elections. Therefore, I do not think we need worry about the so-called multinationals.

The context in which I once used the word "multinational" in my speech is that, for those who are afraid, they have a vision of these rich multinationals taking over the process. That is not my view. I was only stating another view.

**Senator Graham:** By extension, Senator Oliver would suggest that multinationals could spend even more than the political parties on one specific issue that they wanted to promote; is that correct?

**Senator Oliver:** It is possible that they could. I am saying that there should ultimately be a cap on third-party advertising but that the cap must be higher than the \$150,000. It is too low. It is punitive, it is unfair, and it is not equal to the political process.

On motion of Senator Finestone, debate adjourned.

[Translation]

• (1720)

## THE BUDGET 2000

### INQUIRY—DEBATE CONTINUED

On the Order:

Resuming debate on the inquiry of the Honourable Senator Lynch-Staunton calling the attention of the Senate to the Budget presented by the Minister of Finance in the House of Commons on February 28, 2000. (*Honourable Senator Kinsella*).

**Honourable Roch Bolduc:** Honourable senators, as an introduction to the budget debate, I want to begin by pointing out that the government has no convincing economic policy at all. In the Speech from the Throne, for example, I was struck by a statement about what was called:

...the builders of Canada...

The speech then goes on to refer to the builders of the 20th century — artists, writers, researchers — everyone except entrepreneurs. I must say this took me aback, having always thought that Canadian Pacific in its day and Northern Telecom nowadays were also among the builders of Canada.

The speech went on about a dynamic economy, but with current tax rates in Canada we are not going to attract head offices here, or foreign investment. Nor will we keep our most mobile and most ambitious citizens.

All the rest of the Speech from the Throne consisted in pointing out once again the government's tremendous compassion for certain social groups, with other people's money. Faced with this, I said to myself that a Throne Speech may after all express a general political philosophy, one that distinguishes us from our neighbours to the south, for example, but the Minister of Finance will talk about the economy, with facts and figures.

What did he say in his Economic Update of last October? I will extract three of his assertions. On page 49 of the document, the Minister said, and I quote:

Fiscal progress since 1993-94 has been due to a reduction in program spending and a growing economy.

This is not correct. The reality is that the recovery is 25 per cent due to reductions in spending and 75 per cent due to higher revenues from the partial de-indexation of tax parameters, higher taxes and moderate economic growth. A Minister of Finance should state the facts, not distort them.

On same page of his document, the Minister said:

Federal program spending as a percentage of gross domestic product (GDP) has fallen to 12.4 per cent, its lowest level since 1949-50.

He is playing with words. What matters to ordinary people is the ratio to the GDP not of spending programs but of total expenditure, including debt servicing charges. However, \$156 billion out of \$940 billion is 17 per cent. To this must be added provincial spending, so that it is a great deal more than 40 per cent of GDP that flows through government hands — this is an enormous proportion compared with 34 per cent in United States, our main trade competitor.

A little further on, the Minister spoke of the \$42-billion deficit that the Conservative government had left him at the end of the recession in the early 1990s, or 6.5 per cent of GDP. He did not mention the \$37-billion deficit of 1983-84 bequeathed by his Liberal predecessors, or 8 per cent of GDP at the time.



In its mission report on Canada in November 1999, the International Monetary Fund said, and I quote:

The anticipated surplus was partly the result of the systematic increase in the personal tax burden caused by lack of full indexation to inflation.

This could be called taxation on automatic pilot.

The Business Council on National Issues said in April 99, and I quote:

[English]

Despite the progress of the past decade, Canada is underperforming in a number of key areas. Gains in productivity and in innovation are not keeping up with those of our major competitors. Our standard of living is in relative decline. The unemployment rate remains too high. Our currency continues to trend downward. Our global share of foreign direct investments is falling. Public debt is too high, personal taxes are too heavy. The real after-tax incomes of Canadians have stagnated. And Canada's ability to retain and build knowledge-intensive activities such as head office operations and research and development is being seriously challenged.

[Translation]

In its survey of the 20th century, the *Economist* provides an overview of countries and economic sectors. How does it characterize Canada? By high taxes, low productivity, underemployment and a brain drain. It even includes a table of locations around the world that are less desirable as places to live because of the taxes, and Canada unfortunately is there in the top rank. Pierre Fortin, in a well-documented study for the C.D. Howe Research Institute, sets out the same characteristics as the *Economist*. He says that we are underemployed, overtaxed and underproductive. We are far from the minister's boasts.

However, let us move on to the February 28 budget speech.

I want to start by congratulating the minister on the full indexation of tax parameters. The government should have abandoned partial de-indexation in 1993, but it preferred to sock away the revenue from this insidious form of automatic taxation so that it could brag of having vanquished the deficit. If only it had stopped throwing money around and ladling it out to various pressure groups, whose claims did not take the general good into account. However, the minister has not grasped that by distributing little bits of tax advantage to everyone, he has not tackled the Canadian economy's fundamental problem: our lagging increase in productivity. What we need is a tax policy whose primary objective is to regain the ground lost in relation to our neighbours, especially as regards increased productivity. We have to follow the example of Ireland in the European Union. We have to do better than our American competitors if we want to

raise the standard of living of our poor and our middle class, and see a somewhat stronger Canadian dollar. The minister is not focussed on growth and productivity; he is focussed on the false redistribution of wealth so dear to the Liberal Party, which between 1975 and 1984 got us into this mess in the first place.

When a businessman like the minister cannot convince his colleagues that the primary issue is growth and not redistribution, you have to wonder about his leadership and his colleagues' sense of perspective.

[English]

The minister's budget is full of red herrings. It sets out five-year objectives and trumpets the potential results, but the reality for the year 2000 — which is what matters to us all — is a few very modest changes. Dust is being thrown in our eyes here because a budget is an annual exercise, whatever else may be said about it, when it comes to such things as tax rates and tax brackets.

The minister speaks of the year 2004 as though he thought his government would still be in power then, and with the same ideas. If there was ever a government undermined by bad administration, it is his; and if there was ever a party that changes its mind, it is his. Remember the debate over the GST and free trade. Why should we believe him today?

I do not understand why the minister, who was an astute businessman in another period of his life, does not grasp the primordial importance of a tax system that is competitive with our biggest competitor. If he had understood this, he would have taken radical steps to reform corporate taxation, which in Canada is the opposite of what it should be, according to Jack Mintz. It encourages investment in traditional sectors and discriminates against the high-technology enterprises that are the way of the future and the cornerstones of the new economy.

Like the Great Communicator south of the border, the minister has been speaking here and there in Canada for the past three months. One day he suggests he will do something serious about the national debt. The next day he is concerned about the problem of productivity in our manufacturing sector, which is hampering growth. The day after that he is on about nurturing high-tech enterprises, and then he is encouraging young people to stay in Canada. On yet another occasion, he says it is the family that must be supported.

What is the result? Titbits scattered all around, but above all new expenditures, at an annual rate greater than that of the country's economic growth, in sectors that are not all priorities and not necessarily within his jurisdiction, such as local infrastructures. If he had gone much further, he would have lavished even more on the Department of Human Resources. This is hardly credible, given what we now know about the way that department is managed.

The minister says to each group he meets what he knows that particular clientele wants to hear. In certain circles, they call that being a good politician. Honourable senators can see where this type of political exercise gets us. It leads to cynicism among the people, who no longer believe anything a politician says — and I say the people are right to be cynical. When politicians say one thing and do another, that is the end of their credibility.

Perrin Beatty of the Alliance of Manufacturers and Exporters is so right — the government had a chance to create incentives for investment that would generate jobs here, and it passed it by.

Mr. McCallum of the Royal Bank has said that all the elements are there in this budget — perhaps, but in the form of little bits doled out to every group. That is not the way we will increase productivity in Canada, which is our number one problem. The government has turned its back on the most urgent problem. The government has no priority. It has no priority in agriculture, health, defence, foreign policy, or aid to developing countries. It wants to be an activist just about everywhere except where it matters.

• (1730)

Another example: the minister has made speeches saying that something has to be done about the public debt. He appears to be happy with it now because the debt-to-GDP ratio has gone down a little, from 63 per cent to 60 per cent, and the debt-servicing ratio in the budget has fallen from 30 per cent to 27 per cent. It is obvious that Canadians' efforts for one year will lead to this kind of result, by simple growth of the GDP. However, if inflation goes up a point or two, will the minister be any further ahead?

Let us take the main points of the minister's speech one by one, clarifying the preliminary remarks and assessing those points in terms of their contribution to increased productivity, which is the fundamental condition for real growth and thus a higher standard of living for Canadians.

With respect to personal income tax, the basic deduction is going up from \$6,800 to \$8,000 in five years. We are still far from a decent minimum, but the added disposable income will help people on modest incomes meet their basic needs.

With respect to intermediate tax rates, 24 per cent instead of 26 per cent is progress, as is the threshold of \$35,000 instead of \$29,590. Just between you and me, honourable senators, taking away a quarter of the income of people earning around \$40,000 is still too much. Applying the 29 per cent rate to \$70,000 and up is a little better than applying it to \$59,000 and up, but it is not far from one-third of income handed over to the government, without counting what these middle-income earners pay in consumption taxes on things like retail sales, gasoline and entertainment.

As Sherry Cooper pointed out in her recent book, personal income tax is punitive in Canada. After taxes, our average per capita income is 40 per cent lower than it is in the United States.

The average disposable per capita income in Toronto is barely that of Arkansas, which in turn is half that of Connecticut. When people realize that their personal disposable income is not going up, or is hardly going up, they become more aggressive, and strikes increase the number of working days lost, which of course affects productivity.

As for the so-called temporary surtax, it will be with us for a long time to come at the rate the minister wants it to disappear. The government should have the courage to rewrite its tax tables and say openly that it wants to increase the progressiveness of personal income tax because that is what it is doing anyway in its roundabout fashion. The government prefers to continue hounding the successful, just as social democrats would do. However, that is not how we build a strong society. Here in Canada, we discourage our brightest and best.

Now, honourable senators, let us take a look at corporate income tax. It has gone down by just 1 per cent for service and high-tech enterprises, falling from 28 per cent to 27 per cent. There is nothing there to make anyone jump for joy. The government has taken a baby step toward correcting a major economic stupidity in our tax rates, which are higher than in any other G-7 country. Since the 1960s, taxes on profits have been going up steadily. Last year I raised this in the budget debate, and Senator Murray asked me why, given the generous tax treatment for research and development, the operational results are not better. The answer is that corporate taxes are too high. This is the same reason that explains our slide in direct foreign investment.

[Translation]

The capital gains inclusion rate has been reduced to two-thirds from three-quarters. However, much remains to be done to attract investment. Here again the Minister has been much too timid. Deferring taxation of profits on stock options until they are sold instead of when they are taken up is a start toward a measure that was needed to encourage talent to remain in Canada, but it is not sufficient in itself. Tax changes have to be quite striking to change behaviours, and among other things to raise the labour market participation rate. Losing the equivalent of half and more than half of one year's graduates in engineering, computer science and nursing is a serious matter. The President of Nortel was very clear about that.

With respect to RRSPs and RPPs, the ceiling on foreign investment has been raised 25 per cent. It was quite some time ago that the markets evolved instruments such as foreign index funds, allowing investors to get around the Canadian protectionism that simply reinforced the mediocre performance of overtaxed Canadian businesses and the Bank of Canada's fear of seeing short-term foreign investments increase, while businessmen were at the same time going in for direct foreign investment likely to speed the fall of the Canadian dollar.

After much hesitation, the minister is yielding to the evidence and putting employment insurance premiums at an appropriate rate for ensuring the system's equilibrium.



I should now like to draw your attention, honourable senators, to public spending. I will be returning a little later to transfers to provinces, which in my opinion must be rethought to give more encouragement to innovation. The government is adding financing for university research chairs; I have nothing against the addition of salaried researchers, but that is not the way that General Electric, Microsoft, 3M, Intel, CISCO, Hewlett-Packard, Hughes Aircraft, Lucent Technology and the other industrial giants get the patents and market the new products that ensure the dizzying increase of the American economy's productivity — over 3 per cent per year for the past three years. It is the American economy that attracts the talent and the foreign investment while we are losing them. Is this another new trend? I hope not, but in the meantime we have become net exporters of capital for the first time.

The government does not need to be innovative in expenditure programs that lead to scandals, but in taxation, in the way it encourages all economic agents — businesses, managers, scientists, operators — to do things as efficiently as possible. I would add that the more omnipresent regulation becomes, the more entrepreneurial freedom is compromised.

I am not the only one who thinks so: others include the Conference Board, the Canadian Chamber Of Commerce, the Conseil du Patronat, Mr. Cleghorn of the Royal Bank, and the Business Council on National Issues. Then there are highly regarded economists with the C.D. Howe Research Institute and others such as Frank, McCallum, Migué, Fortin, and their eminent American colleagues who have studied the phenomenon of growth as have Barro, Lucas, Romer and Krugman.

Even Mr. Manley, the Minister of Industry, pointed this out two days after his colleague's budget speech. And the first Canadian to receive the Nobel Prize in economics, Robert Mundell, recently delivered the same message.

In short, the minister has wasted a golden opportunity for a change of direction that would have thrust us ahead. Instead, he is sprinkling tax benefit crumbs hither and thither to please young people, the middle class, parents, seniors, universities, et cetera.

The minister has taken baby steps in all directions without a real about-face toward higher productivity. He is hoping the floating exchange rate will give us a feeble Canadian dollar that will subsidize manufacturers lacking competitive edge.

Frankly, honourable senators, I have never understood on one the hand why, in a market system like ours, governments squeeze everything they can out of the enterprises that are the engines of prosperity. And on the other hand, I have never understood what kind of intellectual contortions can lead anyone to believe that cabinet ministers are more competent than businessmen when it comes to investing the latters' money in machines and equipment intended to help expand production capacity. As R. Martin said in *The Globe and Mail* of February 9:

[English]

Governments cannot pick winners but losers can pick governments.

[Translation]

I can already hear the typical retort from the social democratic Liberals, arguing that companies that do well should pay their share so the government can redistribute the money to those who need it more.

Redistribution — social justice as decided on by governments — has become an ideology used more to garner votes than to share the wealth. True redistribution is a minor part of the process, whose overall result is more a series of transfers to interest groups not made up of the most disadvantaged. Scarcely 10 per cent of this budget will benefit the poor. It is the classic story of temporary and successive coalitions that manage to gain from power struggles.

The real reply to my question is that the social role of companies is to make a profit and invest it, so that growth is assured. When we have prosperity we can afford generous social policies. Otherwise, they are just another attempt to make us all equally poor.

During a recent debate that Senator Ghitter launched on the value of subsidies to business, supposedly to create jobs, the Government Leader in the Senate apologized with sobs in his voice for this system of subsidies for business. Quite apart from any scandals that have resulted from expenditures without analysis, audits or common sense, I would like to say to our friends on the opposite side that it is in their best interests to look at certain research papers on government expenditure by a number of distinguished academics. What is the general finding of the empirical investigations by Professors Gwartney, Holcombe, Lawson, Mackness and others, recently printed in the *Cato Journal* and other recognized scholarly publications? The general finding is that there is a very clear inverse relationship between the size of government and economic growth.

In other words, the more government expenditure increases in relation to GDP — because of subsidies to business and other dubious redistribution measures — the more a country's growth slows down.

[English]

This holds true, for example, for the OECD countries from 1960 to 1996. This is a very important observation, which has been demonstrated over a 40-year period in terms of the economic evolution of 23 industrialized countries. What more proof could anyone want? I urge the government leader to read a few of these major research papers. Next time they would undoubtedly modify his "playing to the crowd" response to Senator Ghitter's solid arguments.



How can anyone still seriously maintain that this arbitrary redistribution has any value, after so many notorious instances of failure and scandal? The more public employment programs we have, the higher the unemployment rate.

• (1740)

If the minister wants exact reference to the studies I have mentioned, I can provide them right away. In the mean time, I point out to you here today, honourable senators, that in the years and the countries where public spending was less than 25 per cent of the GDP, the growth rate reached 6.6 per cent. The larger the role of the state, the slower economic growth became, falling to 1.6 per cent in the countries in the years where public spending reached 60 per cent of the GDP. This summarizes the finding of Migué and Boucher in their recent study on taxation.

A drop of 10 percentage points in government expenditure as a percentage of GDP results in one additional percentage point of economic growth, according to the previously cited authors. Public spending explained 42 per cent of variations in growth, in their opinion. A deduction of 29 per cent in public spending would lead to an increase in 22 per cent in economic activity. Above 25 per cent of GDP, the benefits of public spending are nil and add nothing to the population's well-being. An increase of 10 per cent in public spending leads to a decrease of 1.6 per cent in the rate of investment.

Examples confirming these assertions can be found in Ireland, the United Kingdom, New Zealand and — closer to home — Alberta and Ontario.

From 1960 to 1996, Canada increased its public spending from 28.6 per cent to 46.4 per cent, or an increase of 17.8 percentage points, about 5 per cent per decade, while the United States went from 28.4 per cent to 34.6 per cent, an increase of 6.2 percentage points over 40 years.

We should, therefore, not be surprised if the Americans have, over the past decade, rapidly increased their traditional economic lead over us. I do not say that all their progress is attributable to this factor. I know that other factors have helped fuel the superior growth in productivity of the American economy, but because public spending is lower there, taxes are lower and more resources are available for individuals and businesses for research and development, which in turn leads to innovation in products, services and methods.

This favourable climate for entrepreneurship attracts risk capital, high-performance management and brains with new ideas, and encourages rivalry among teams within and between companies.

For a number of years now, people on the government side have been saying that cuts in departmental spending are over. And indeed the government has begun once again to spend at more than the rate of growth last year.

Now, what did the authors I cited earlier observe? For the past 40 years, a steady expansion in government expenditures and activities outside so-called essential services — that is, protection of people and property, conflict resolution, infrastructure construction, education. According to Grubel and Gwartney, the cost of these essential public services corresponds roughly to 15 per cent of a country's GDP, with 5 per cent going to defence and the police. In Canada, we devote only 1 per cent of GDP to these sectors. We devote 5 per cent to training or education and a final 5 per cent to highways, the environment, et cetera.

Let us say for purposes of discussion that the government's share of health care costs must remain what it is at the present time, 6.7 per cent of GDP, and that it must also ensure a public social safety net costing 7 to 8 per cent of GDP. This would mean total government spending of 27 to 30 per cent of GDP. However, in Canada, we are well above 40 per cent. How can the government claim that its spending cannot be cut further?

Yet we know the productivity declines as public spending increases, because the political process displaces entrepreneurial energy toward rent-seeking, the quest for hand-outs that results from the famous redistribution of income on which governments are so fixated.

Gwartney and his colleagues also observed that the higher a country's rate of government spending goes above the average of the OECD countries, the slower its economic growth becomes.

Had the United States over a long period, say 100 years, had a growth rate just 1 per cent lower, their per capita income today would be that of Mexico.

Among government expenditures, I would like to choose a category other than the one that has recently been the object of waste and patronage. My chosen category is transfers to the provinces. I realize that transfers are regarded as an essential element of Canadian federalism, but these transfers simply take the revenues of the richer provinces to give them to the poorer provinces. That is the theory, the justification for this type of redistribution. The practice is not perfect, however, since middle-income Canadians in the richer provinces are subsidizing well-off Canadians in the poorer provinces.

[Translation]

In addition, outside the equalization payment program the provinces are not always treated equally by the transfer system, which has a negative effect on labour market mobility.

Finally, government accountability is sacrificed in this process. As far as the social safety net is concerned, intergenerational transfers are not very equitable either. Like redistribution, they are far from perfect if you look at the cost/benefit ratio applicable to people of my generation as opposed to that applicable to my children. The young people who are being had in this process may be justified in being a little cynical. It is a classic case of politicking: you take money from all taxpayers and you give more of it back to one coalition of voters, in this case, seniors. The favours are distributed immediately and then, when it becomes apparent later that contributions are inadequate, you ask everyone to pay more, including young people. This has been going on here since 1998.

In this case, in addition, a fund has been created where premiums are compulsory and the monopolistic investment agency becomes a major player in Canadian and foreign businesses. By holding shares in private companies, the government expands its influence indefinitely into the market system.

Honourable senators, I tell you that this does not presage anything good for the Canadian economy and for the freedom of entrepreneurs.

One final spending sector that is always worrisome is that of health care. In 1996, 9.5 per cent of GDP was devoted to it in Canada, or \$75 billion, of which two-thirds was paid by governments and one-third by people themselves or by insurance companies. In five years' time, not just 6 per cent of the population will be 70 and older, but 9 per cent.

From 1965 to 1999, health care more than doubled its drain on GDP. Since we know it costs four times as much — \$8,000 instead of \$2,000 — to care for people aged 65 and over than it does for people aged 45 to 64, we can already conclude that the cost of prescription drugs, which absorbed 8.8 per cent of expenditures in 1975 and 14 per cent in 1996, is going to push up the taxpayers' bill.

If you add to this factor social security costs, which have gone from 6 per cent of GDP to 10 per cent over the past few decades, with the result that instead of absorbing 15 per cent of GDP social policies are now absorbing 23 per cent, or \$210 billion, it seems sufficiently obvious to me that reform is necessary — if governments have the courage to allow private capital and competition into the system, in the form of public insurance schemes.

One final reflection. The minister tells us that the debt to GDP ratio is dropping toward his goal of 50 per cent. I would remind you that to this \$570 billion national debt we must add, for the same Canadian taxpayers, the provincial debts. That total is around 90 per cent of GDP, or \$845 billion. This means that 8.5 per cent of GDP goes on debt servicing, which makes us particularly vulnerable to an American recession, for example, or to a jump in the inflation rate.

I am not saying that the Minister of Finance in his budget is not heading in the right direction. This was pointed out to him so often over the past year that he did not have much choice. What I am saying is that he is taking baby steps and that the public is letting itself be lulled to sleep by the results promised for five years from now. For me, those promised results are just good intentions. The realities are the baby steps, which in no way constitute sufficient incentives for a massive increase in domestic and foreign investment in Canada.

In addition, the reaction of the markets did nothing for the dollar, so the price of the imported machinery and high-tech equipment intended to boost our productivity remains the same, that is, too high. As a result, not enough of these tools will be imported to make a real difference in the way we operate. And when I speak of the way we operate, I mean in the manufacturing of traditional products as well as in the new economy, for services like transportation, utilities, energy and telecommunications, not to mention government.

As Mr. Thomas d'Aquino of the Business Council on National Issues said, American competition is happening now, not in four years. At this rate, we are and will remain the most highly taxed G-7 country. In short, honourable senators, what I extract from the budget is that the Finance Minister has understood the blunt message from the business community but has not actually done anything much for the priority of priorities, increased productivity. The impact of the government's decisions of February 28 will thus fail to meet Canadians' expectations in any but the most minimal sense.

Instead of cutting taxes by let us say 20 per cent, the minister cuts them by half that and keeps the rest, not to pay down the debt, but to spend. The result is that in our contest with our main rival, the United States, we are no further ahead than ever. The minister wants to spend money on all sorts of programs, but while he does so, the brain drain and the investment drain will continue. That is a pity.

I can already hear the minister retorting that more public money had to be invested in health care. I say no — what is needed is a change in the system, which will no longer work without private sector involvement. I am not often in agreement with the Finance Minister of Quebec, but for once I think he is right to say that the problem is mainly one of administration, as the Conference Board explains in its study on the performance of the Canadian economy in 1999.

In conclusion, I would sum up my thinking in four points. One, the government's economic philosophy is not convincing. Two, the government has not placed enough emphasis on the priority problem of increasing productivity. Three, it is only tinkering with the taxation system, and its changes will have scarcely any effect on our economic progress. And four — very typical of the Liberal government in its dealings with problems — money is being fired into the crowd without guidelines or targets. This is a pity. They could have done so much better with those billions which, let us not forget, belong to the people of Canada.

On motion of Senator Kinsella, for Senator Stratton, debate adjourned.

[English]

#### BUSINESS OF THE SENATE

**Hon. Dan Hays (Deputy Leader of the Government):** Honourable senators, after a brief discussion with my counterpart, I would request leave to stand all remaining items on the Order Paper and Notice Paper and that they remain in the position that they hold today.

**The Hon. the Speaker *pro tempore*:** Is leave granted, honourable senators?

**Hon. Senators:** Agreed.

#### ADJOURNMENT

Leave having been given to revert to Government Notices of Motion:

**Hon. Dan Hays (Deputy Leader of the Government),** with leave of the Senate and notwithstanding rule 58(1)(h), moved:

That when the Senate adjourns today, it do stand adjourned until Tuesday next, March 28, 2000, at 2 p.m.

Motion agreed to.

The Senate adjourned until Tuesday, March 28, 2000, at 2 p.m.



**THE SENATE OF CANADA**  
**PROGRESS OF LEGISLATION**  
 (2nd Session, 36th Parliament)  
 Thursday, March 23, 2000

**GOVERNMENT BILLS**  
**(SENATE)**

No.	Title	1st	2nd	Committee	Report	Amend.	3rd	R.A.	Chap.
S-3	An Act to implement an agreement, conventions and protocols between Canada and Kyrgyzstan, Lebanon, Algeria, Bulgaria, Portugal, Uzbekistan, Jordan, Japan and Luxembourg for the avoidance of double taxation and the prevention of fiscal evasion with respect to taxes on income	99/11/02	99/11/24	Banking, Trade and Commerce	99/12/07	0	99/12/16		
				Foreign Affairs	99/12/09	0			
S-10	An Act to amend the National Defence Act, the DNA Identification Act and the Criminal Code	99/11/04	99/11/18	Legal and Constitutional Affairs	99/12/16	2	00/02/09		
S-17	An Act respecting marine liability, and to validate certain by-laws and regulations	00/03/02							
S-18	An Act to amend the National Defence Act (non-deployment of persons under the age of eighteen years to theatres of hostilities)	00/03/21							
S-19	An Act to amend the Canada Business Corporations Act and the Canada Cooperatives Act and to amend other Acts in consequence	00/03/21							

**GOVERNMENT BILLS**  
**(HOUSE OF COMMONS)**

No.	Title	1st	2nd	Committee	Report	Amend.	3rd	R.A.	Chap.
C-2	An Act respecting the election of members to the House of Commons, repealing other Acts relating to elections and making consequential amendments to other Acts	00/02/29							
C-4	An Act to implement the Agreement among the Government of Canada, Governments of Member States of the European Space Agency, the Government of Japan, the Government of the Russian Federation, and the Government of the United States of America concerning Cooperation on the Civil International Space Station and to make related amendments to other Acts	99/11/23	99/12/01	Foreign Affairs	99/12/09	0	99/12/14	99/12/16	35/99

C-6	An Act to support and promote electronic commerce by protecting personal information that is collected, used or disclosed in certain circumstances, by providing for the use of electronic means to communicate or record information or transactions and by amending the Canada Evidence Act, the Statutory Instruments Act and the Statute Revision Act	99/11/02	Subject matter 99/11/24	99/12/06	99/12/09	
C-7	An Act to amend the Criminal Records Act and to amend another Act in consequence	99/11/02	99/11/17	99/11/30	99/12/08	
C-9	An Act to give effect to the Nisga'a Final Agreement	99/12/14	00/02/10	Aboriginal Peoples		
C-20	An Act to give effect to the requirement for clarity as set out in the opinion of the Supreme Court of Canada in the Quebec Secession Reference	00/03/21				
C-21	An Act for granting to Her Majesty certain sums of money for the public service of Canada for the financial year ending March 31, 2000	99/12/14	99/12/15	-	99/12/16	36/99
C-29	An Act for granting to Her Majesty certain sums of money for the public service of Canada for the financial year ending March 31, 2000	00/03/23				
C-30	An Act for granting to Her Majesty certain sums of money for the public service of Canada for the financial year ending March 31, 2001	00/03/23				

## COMMONS PUBLIC BILLS

No.	Title	1st	2nd	Committee	Report	Amend.	3rd	R.A.	Chap.
C-202	An Act to amend the Criminal Code (flight)	00/02/08	00/02/22	Legal and Constitutional Affairs	00/03/02	0	00/03/21		
C-247	An Act to amend the Criminal Code and the Corrections and Conditional Release Act (cumulative sentences)	99/11/02							

## SENATE PUBLIC BILLS

No.	Title	1st	2nd	Committee	Report	Amend.	3rd	R.A.	Chap.
S-2	An Act to facilitate the making of legitimate medical decisions regarding life-sustaining treatments and the controlling of pain (Sen. Carstairs)	99/10/13	00/02/23	Legal and Constitutional Affairs					
S-4	An Act to provide for judicial preauthorization of requests to be made to a foreign or international authority or organization for a search or seizure outside Canada (Sen. Nolin)	99/11/02							
S-5	An Act to amend the Parliament of Canada Act (Parliamentary Poet Laureate) (Sen. Grafstein)	99/11/02	00/02/22	Social Affairs, Science and Technology					
S-6	An Act to amend the Criminal Code respecting criminal harassment and other related matters (Sen. Oliver)	99/11/02	99/11/03	Legal and Constitutional Affairs					

S-7	An Act respecting the declaration of royal assent by the Governor General in the Queen's name to bills passed by the Houses of Parliament (Sen. Lynch-Staunton)	99/11/02	00/02/22	Privileges, Standing Rules and Orders
S-8	An Act to amend the Immigration Act (Sen. Ghitter)	99/11/02		
S-9	An Act to amend the Criminal Code (abuse of process) (Sen. Cools)	99/11/03		
S-11	An Act to amend the Criminal Code to prohibit coercion in medical procedures that offend a person's religion or belief that human life is inviolable (Sen. Perrault, P.C.)	99/11/04		
	<i>(Dropped from Order Paper pursuant to Rule 27(3) 00/02/08)</i>			
	<i>(Restored to Order Paper 00/02/23)</i>			
S-12	An Act to amend the Divorce Act (child of marriage) (Sen. Cools)	99/11/18		
S-13	An Act to assist in the prevention of wrongdoing in the Public Service by establishing a framework for education on ethical practices in the workplace, for dealing with allegations of wrongdoing and for protecting whistleblowers (Sen. Kinsella)	99/12/02	00/02/22	National Finance
S-15	An Act to amend the Statistics Act and the National Archives of Canada Act (census records) (Sen. Milne)	99/12/16		
S-16	An Act respecting Sir John A. Macdonald Day (Sen. Grimard)	00/02/22		

PRIVATE BILLS

No.	Title	1st	2nd	Committee	Report	Amend.	3rd	R.A.	Chap.
S-14	An Act to amend the Act of incorporation of the Board of Elders of the Canadian District of the Moravian Church in America (Sen. Taylor)	99/12/02	99/12/07	-	-	-	99/12/08		



# CONTENTS

Thursday, March 23, 2000

	PAGE		PAGE
<b>ROUTINE PROCEEDINGS</b>			
<b>The Estimates, 1999-2000</b>			
Report of National Finance Committee on Supplementary Estimates (B) Presented and Printed.			
Senator Murray .....	804		
Report of National Finance Committee on Main Estimates Presented and Printed. Senator Murray .....	804		
<b>The Estimates, 2000-01</b>			
Report of National Finance Committee on Main Estimates Presented and Printed. Senator Murray .....	804		
<b>Appropriation Bill No. 4, 1999-2000 (Bill C-29)</b> First reading. ....	804	<b>Referendum Clarity Bill (Bill C-20)</b> Application of Terms. Senator Rivest .....	808
		Senator Boudreau .....	808
<b>Appropriation Bill No. 1, 2000-01 (Bill C-30)</b> First Reading. ....	805	<b>Human Resources Development</b>	
		Employment Insurance—Effect of Intensity Rules on Seasonal Workers. Senator Oliver .....	809
		Senator Boudreau .....	809
<b>Asia-Pacific Parliamentary Forum</b> Eighth Annual Meeting—Notice of Inquiry. Senator Carstairs ..	805	<b>Delayed Answer to Oral Question</b>	
		Senator Hays .....	809
<b>Canada-Japan Inter-Parliamentary Group</b> Tenth Annual Bilateral Meeting with Japan-Canada Parliamentarians Friendship League—Notice of Inquiry. Senator Hays .....	805	<b>United Nations</b>	
		Government Commitments to Alleviate Poverty to Human Rights Committee. Question by Senator Wilson. Senator Hays (Delayed Answer) .....	809
<hr/>			
<b>Visitors in the Gallery</b> The Hon. the Speaker .....	805	<b>Visitors in the Gallery</b>	
		The Hon. the Speaker .....	809
<hr/>			
<b>Canadian District of the Moravian Church of America</b>			
		Private Bill to Amend—Message from Commons. The Hon. the Speaker .....	809
<hr/>			
<b>ORDERS OF THE DAY</b>			
<b>Business of the Senate</b>			
		Senator Hays .....	809
<b>Bill to Give Effect to the Requirement for Clarity as Set Out in the Opinion of the Supreme Court of Canada in the Quebec Secession Reference (Bill C-20)</b>			
Sea King Helicopters—Level of Flight Training for Pilots. Senator Forrestall .....	805	Second Reading—Debate Adjourned. Senator Boudreau .....	810
Senator Boudreau .....	805	Senator Lynch-Staunton .....	813
Replacement of Sea King Helicopters. Senator Forrestall .....	806	Senator Rivest .....	816
Senator Boudreau .....	806	Senator Kinsella .....	816
Replacement of Sea King Helicopters—Funds in Main Estimates, 2000-01. Senator Stratton .....	806	Senator Murray .....	817
Senator Boudreau .....	806	Senator Nolin .....	818
		Senator Beaudoin .....	819
<b>Health</b> Restructuring and Revitalizing System. Senator Angus .....	806	Senator Roche .....	821
Senator Boudreau .....	807	Senator Cools .....	821
		Senator Fraser .....	824
<b>Auditor General</b> Government Support Programs—Accounting Controls. Senator Angus .....	807	<b>National Defence Act (Bill S-18)</b>	
Senator Boudreau .....	807	Bill to Amend—Second Reading—Debate Adjourned. Senator Pearson .....	824

	PAGE		PAGE
<b>Canada Elections Bill (Bill C-2)</b>		<b>Business of the Senate</b>	
Second Reading—Debate Continued. Senator Oliver .....	826	Senator Hays .....	836
Senator Hays .....	829	Adjournment. Senator Hays .....	836
Senator Atkins .....	829		
Senator Graham .....	829		
<b>The Budget 2000</b>		<b>Progress of Legislation</b> .....	i
Inquiry—Debate Continued. Senator Bolduc .....	836		









*If undelivered, return COVER ONLY to:*  
Public Works and Government Services Canada —  
Publishing  
45 Sacré-Cœur Boulevard,  
Hull, Québec, Canada K1A 0S9



CANADA

# Debates of the Senate

2nd SESSION

• 36th PARLIAMENT

• VOLUME 138

• NUMBER 39

OFFICIAL REPORT  
(HANSARD)

Tuesday, March 28, 2000

—  
THE HONOURABLE ROSE-MARIE LOSIER-COOL  
SPEAKER *PRO TEMPORE*





## CONTENTS

(Daily index of proceedings appears at back of this issue.)

## OFFICIAL REPORT

### CORRECTION

*[Editor's Note: The following comment, omitted from the Debates of the Senate of Thursday, March 23, will be inserted on page 824, right-hand column, after the first paragraph.]*

**The Hon. the Speaker:** Honourable senators, I have allowed a fair amount of leeway in the questions, much of which took the form of discussion. However, in view of the importance of the matter before us, I felt honourable senators would prefer to have that leeway.

## OFFICIAL REPORT

### CORRECTION

**Hon. J. Bernard Boudreau (Leader of the Government):** Honourable senators, I rise on a point of order to correct what appeared in the *Debates of the Senate* of last Thursday, March 23, at page 814, column 2. The first two paragraphs are a continuation of the quotation I was citing during my speech on Bill C-20 and are not my own words. Those two paragraphs ending with the words "law-making system" should have been indented and included in the quotation when transcribed in Hansard.

## THE SENATE

Tuesday, March 28, 2000

The Senate met at 2:00 p.m., the Speaker *pro tempore* in the Chair.

Prayers.

### SENATORS' STATEMENTS

#### REFERENDUM CLARITY BILL

COMMENTS BY LEADER OF THE GOVERNMENT DURING DEBATE

**Hon. Serge Joyal:** Honourable senators, last Thursday, March 23, the Leader of the Government in the Senate honoured me by quoting from a speech I gave almost 20 years ago while I was a member of the other place. His use of my words may suggest that I share his view that the Senate ought to have a limited role in Bill C-20 — a lesser role than the other place — in evaluating the clarity of any secession question or the validity of any secession vote. However, this is not accurate. The honourable minister knows my position very well because I defined it in a 12-page letter to him more than eight weeks ago.

A casual reading of the minister's speech might suggest that my words serve to support the argument he was making, but a more careful review of the record shows plainly that my words do not serve such a purpose. With respect, I sincerely regret that my honourable colleague did not wait to hear my speech on Bill C-20 before defining my position for me.

I have been in public life for nearly 30 years. I have always been consistent in my statements about the Senate, its role and its function in the Constitution of Canada. I have always shown the utmost respect for the institution and for its distinguished members. I have never thought or said that the other place alone was capable of acting as the sole protector of the rights and freedoms of all Canadians and of the interests of all regions of our federation.

Moreover, in a speech to the other place on March 27, 1984, when I was then secretary of state of Canada, I defended the Senate vigorously. I intervened immediately after a Conservative member attacked the reputation of five members of the Senate: the Honourable Senators Pitfield, Kirby, Grafstein, Cools and Marsden. In my response to the member on that occasion, I warned of the danger of undermining the credibility of parliamentary institutions and the danger of interfering unduly with the independence of either House of Parliament.

Although I spoke with the Honourable Senator Boudreau at the opening of the sitting last Thursday, I was not advised that he would use my speech on November 30, 1981, as reported at page 13499 of Hansard. Given the opportunity, my learned colleague would have realized that the views I expressed in 1981 are exactly the views I hold and believe today. Clearly, the arguments I expressed in the other place do not serve the conclusions that were attributed to me last Thursday.

Honourable senators, I look forward to participating in the debate on Bill C-20 so that I can correct any misunderstanding by stating clearly and openly my position on the constitutional role of the Senate in our parliamentary system.

#### THE LATE BARBARA CLEMENT THE LATE DAVID ELTON THE LATE BRODIE MCDONALD

TRIBUTE

**Hon. Dan Hays (Deputy Leader of the Government):** Honourable senators, on Saturday, March 25, three Canadians from my hometown of Calgary lost their lives in a tragedy off the California coast. Mrs. Barbara Clement, a parent volunteer, Mr. David Elton and Mr. Brodie McDonald, students, were among those on a trip from William Aberhart High School to California to explore the flora and fauna of that region when Mrs. Clement was unexpectedly swept into the sea. David Elton and Brodie McDonald tried to save her but were lost to the ocean and are presumed dead.

Honourable senators, I express my condolences and those of all senators at this sad news. We all know the worry when our children leave home. This tragedy is all of our worst fears realized. I extend our sympathy to the families and friends of those lost and to the staff and students of William Aberhart High School. This is a very difficult moment in the history of that fine school, one that by all accounts sees all those who are associated with the school standing together in support of one another at this sad time.

F. Scott Fitzgerald wrote, "Show me a hero and I will write you a tragedy." David Elton and Brodie McDonald, as well as their friend Jordan Nixon and their teacher, Mr. Martin Poirier, demonstrated heroism in valiantly trying to save Mrs. Clement. That display of heroism in the face of this unexpected tragedy reminds us of the good in each of us.

• (1410)

### PARLIAMENTARY VISION FOR INTERNATIONAL COOPERATION AT THE DAWN OF THE THIRD MILLENNIUM

**Hon. Lois M. Wilson:** Honourable senators, I wish to voice support for the strong document "Parliamentary Vision for International Cooperation at the Dawn of the Third Millennium" coming out of the meeting of the Inter-Parliamentary Union in Geneva and circulated to all honourable senators by our Speaker, Senator Molgat. The document points up the important role of parliamentarians internationally and to the UN in particular. I am pleased that the draft document highlights the requirement that states must ensure that their conduct conforms to international law, especially human rights and international humanitarian law.

I am also strongly supportive of the document's statement on debt, which urges the international community to seize the momentum generated by the transition to a new millennium to reduce substantially the debt of the poorest countries of the world and to cancel the public debt of the heavily indebted poor countries. I have spoken previously in this chamber about the necessity of debt forgiveness and of Canada making greater efforts to reverse the decline in official development assistance. I fully support the sentiment that debtor countries must introduce transparent mechanisms of control in order to ensure that the benefits of debt relief result in the socio-economic development of their people.

Honourable senators, a strong and cogent argument is made in the document for parliamentarians to decide on ratification of texts and treaties signed by our government, and to contribute actively to the subsequent implementation process. Throughout this process, the document points out the particular responsibility to engage the public in continuous dialogue and facilitate its input into the decision-making process. Last November, there was a gathering in this very building of 40 representatives of the Canadian public to consider these very issues and to establish mechanisms for follow-up. This document clearly will facilitate the linkage of parliamentarians with civil society on these matters, and I warmly welcome this initiative of the Inter-Parliamentary Union.

### VISIT TO ISRAEL BY POPE JOHN PAUL II

**Hon. Jack Austin:** Honourable senators, at the cusp of the third millennium, the leadership of one man shone out brilliantly last week. I refer to Pope John Paul II in his truly historic visit to Israel in pursuit of reconciliation between the Catholic Church and its followers, and Israel and the Jewish people.

The Holocaust marks a major tragedy of the Jewish people in the last century of the second millennium. The conquest of Israel and the dispersal of the Jewish people at the hands of the Romans was an equivalent tragedy in the first century of the first millennium. In the centuries between, the Jewish people have been a persecuted minority in the lands of Europe, where they

resided, experiencing the heavy burden of the Crusades, the Inquisition and many pogroms, as well as restrictions on living space, education and occupation.

For the Jewish people, the television pictures of Pope John Paul II praying at the Western Wall of the Second Temple, the most sacred place in the world for Jews, and visiting Yad Vashem, the memorial to the lost lives of the Holocaust, will forever be indelible images of reconciliation and hope. A clearly pained and heartfelt Pope expressed himself with these memorable words:

I assure the Jewish people that the Catholic Church...is deeply saddened by the hatred acts of persecution and displays of anti-Semitism directed against the Jews by Christians at any time and any place.

Pope John Paul II called for a new understanding and sense of affiliation between Christians and Jews. He said he regarded the Jews as "the elder brother" of Christians since both had sprung from the traditions of Abraham and Moses. In his own words he said:

Let us build together a new future in which there will be no more anti-Jewish feelings amongst Christians or anti-Christian feelings among Jews.

Certainly, through his revolutionary leadership, Pope John Paul II has founded a new hope, as the third millennium begins, for the ending of the ancient antagonisms between Christians and Jews. Whatever else he has done, he has endeared himself to the Jewish people.

For the Pope's leadership, deep feeling and sincere moral purpose, I say amen.

### NEW BRUNSWICK

#### THIRTY-FIFTH ANNIVERSARY OF PROVINCIAL FLAG

**Hon. Mabel M. DeWare:** Honourable senators, I rise to congratulate my home province, New Brunswick, which on March 25 celebrated the thirty-fifth anniversary of its official flag.

The New Brunswick flag was adopted by proclamation on February 24, 1965, and was unveiled for the first time on March 25 of that year by former premier Louis J. Robichaud, whom we are privileged to count as a member of this chamber. I wish to point out that Senator Robichaud and his former assistant Robert Pichette, were honoured last week by Premier Lord for pioneering the adoption of the provincial flag.

The flag of New Brunswick flies just as proudly today as when it was first flown 35 years ago. It remains an enduring symbol of the rich heritage shared by New Brunswickers and it continues to enhance the province's identity, both within Canada and in the world beyond.



I invite all honourable senators to take a closer look at the New Brunswick flag, which is displayed outside the offices of all New Brunswick senators.

The symbols depicted on the flag are taken from the coat of arms assigned by Queen Victoria to the Province of New Brunswick in 1868. Across the top of the flag there is a gold lion on a red field. The province takes its name from the Duchy of Brunswick in Germany, which in 1784, the year the province was established, was in the possession of King George III of England. The arms of Brunswick consist of two gold lions on a red field, and the arms of the King contained the three gold lions of England. The gold lion in the flag therefore reflects New Brunswick's relationship to both the Duchy of Brunswick and England.

Around the base of the flag there is an ancient galley with its oars in action. The galley is the conventional heraldic representation of a ship. It reflects the two main economic activities, shipping and shipbuilding, which were carried on in New Brunswick when the coat of arms was assigned.

In the newspapers of the time there appeared an anecdote about the flag, which stated that the ship did not have its oars. Senator Robichaud noticed that the ship did not have oars and they were added to the flag, but it did not look right because the oars apparently were pointed in the wrong direction. Hence, the oars were removed while the flag was dedicated.

Am I not correct, Senator Robichaud?

**Hon. Louis J. Robichaud:** Yes.

**Senator DeWare:** Honourable senators, I hope you will join me in congratulating New Brunswick on the thirty-fifth anniversary of its official flag. May it fly in glory for many years to come.

## ROUTINE PROCEEDINGS

### STATE OF DOMESTIC AND INTERNATIONAL FINANCIAL SYSTEM

INTERIM REPORT OF BANKING, TRADE AND COMMERCE COMMITTEE ON STUDY TABLED

**Hon. E. Leo Kolber:** Honourable senators, I have the honour to table the fourth report of the Standing Senate Committee on Banking, Trade and Commerce, which deals with the present state of the domestic and international financial system. The

report is entitled, "Export Development Act."

Honourable senators, pursuant to rule 97(3), I move that the report be placed on the Orders of the Day for consideration at the next sitting of the Senate.

**The Hon. the Speaker *pro tempore*:** Is it your pleasure, honourable senators, to adopt the motion?

**Hon. Senators:** Agreed.

Motion agreed to and report placed on the Orders of the Day for consideration at the next sitting of the Senate.

[Translation]

### PAYMENTS IN LIEU OF TAXES BILL

#### FIRST READING

**The Hon. the Speaker *pro tempore*** informed the Senate that a message had been received from the House of Commons with Bill C-10, to amend the Municipal Grants Act.

Bill read first time.

**The Hon. the Speaker *pro tempore*:** Honourable senators, when shall this bill be read the second time?

On motion of Senator Hays, bill placed on the Orders of the Day for the sitting of Thursday, March 30, 2000.

● (1420)

### CANADIAN RADIO-TELEVISION AND TELECOMMUNICATIONS COMMISSION

NOTICE OF MOTION URGING RECONSIDERATION  
OF RULING DENYING TVONTARIO REQUEST TO DISTRIBUTE  
TÉLÉVISION FRANÇAISE DE L'ONTARIO IN QUEBEC

**Hon. Jean-Robert Gauthier:** Honourable senators, I give notice that on March 30, 2000, I will move:

That the Senate recommend to the Government of Canada that it request the Canadian Radio-Television and Telecommunications Commission (CRTC) to reconsider the decision handed down on March 1, 2000, regarding the application by TVOntario-TFO (French-language television channel), in order to allow the only network producing French and cultural programming outside Quebec to distribute that programming in Quebec by cable.

[English]

## QUESTION PERIOD

### NATIONAL DEFENCE

#### REPORT ON RESTRUCTURING RESERVES— VIABILITY OF MILITIA

**Hon. J. Michael Forrestall:** Honourable senators, I have a question for the Leader of the Government in the Senate. In the fall of last year, the Minister of National Defence announced that the Honourable John Fraser, a member of the Privy Council for Canada, would make recommendations to the minister on the restructure of the reserves, in particular the militia. On Friday, many senators may have noted it reported in the press across the country that 41 of 139 militia units were not viable in an internal Department of National Defence assessment. The militia was assured that the independent, unbiased group led by the Honourable John Fraser would, in fact, make recommendations, but we find the decision being made in National Defence Headquarters in advance of the date on which Mr. Fraser was to report.

Could the minister explain the process for restructure? Is it to involve the recommendations of the Honourable John Fraser's group, or is there another process at work — obviously, there is — within the Department of National Defence?

**Hon. J. Bernard Boudreau (Leader of the Government):** Honourable senators, I recognize the fact that the honourable senator has previously raised the issue of the reserves. In fact, he has done so specifically with respect to one particular unit.

**Senator Forrestall:** The honourable leader will have to answer that one today!

**Senator Boudreau:** I passed that information along to the Minister of National Defence.

I have also had the occasion recently to meet Mr. Fraser. I met him some time ago when we both were, perhaps, in another life. I have the greatest of respect for that individual and was happy to have the opportunity to spend a few minutes with him. He is a man of great integrity and ability.

With respect to the specific question raised by the honourable senator, obviously, the final decisions with regard to the reserves will be made by the Department of National Defence. At what stage those decisions are now in relation to the Honourable John Fraser's work I am not certain, but I will inquire. I hope to return with a clearer picture for the honourable senator of

precisely what the process is and what role Mr. Fraser plays in that process.

**Senator Forrestall:** I was about to ask the Leader of the Government if he could recall the date on which he spoke to the minister about the Cape Breton service battalion group — that is, the 36th service battalion group. The length of time between the honourable leader's contact with the Minister of National Defence belies the fact that the department had any intention whatsoever of waiting for Mr. Fraser's recommendations before announcing their report. The department has managed to upset service personnel in some 41 of the 139 units. I do not see any justification for that whatsoever. Perhaps there is an explanation. I am sure the militia units concerned would love to have one.

**Senator Boudreau:** Honourable senators, the government and the Minister of National Defence support fully the role of the reserves and, in fact, significant resources have been committed.

I had the pleasure, shortly after I was appointed to the Senate, to attend the opening of an impressive new facility in Sydney designed specifically for the reserve forces. That is just one example of the importance and the commitment that the minister attaches to the reserves in the Armed Forces.

The honourable senator asked me a specific question about the process and Mr. Fraser's role in that process. I will attempt to respond to the honourable senator with due dispatch.

#### CAPE BRETON—FUTURE OF NEW RESERVE FACILITY

**Hon. J. Michael Forrestall:** Honourable senators, I should like to ask a final question. Was this new facility in Sydney designed specifically and primarily, but not exclusively, for the 36th battalion? If it was and it was just opened, what will be done with it now? Will it be closed?

**Hon. J. Bernard Boudreau (Leader of the Government):** Honourable senators, having toured that impressive facility, I cannot imagine that the government would intend in any way not to utilize it fully. That gives me a level of confidence as we speak about the topic. It is a brand new facility and quite an impressive one. The reservists themselves and the senior command were extremely happy with the availability of the new facility in Cape Breton. Hopefully, the presence of the reserve in that particular part of the country will remain and continue to play an important role with our Armed Forces.

### REFERENDUM CLARITY BILL

#### SIZE OF MAJORITY OF VALID VOTE AND PERCENTAGE OF ELIGIBLE VOTERS—COMPARISON WITH CONSTITUTIONAL AMENDMENT TO TERM 17 REGARDING NEWFOUNDLAND

**Hon. Michel Coggger:** Honourable senators, my question relates to Bill C-20. I apologize to the Leader of the Government. I wished to raise it last Thursday after his eloquent presentation on the bill, but time did not allow for that.



In particular, I wish to ask the leader a question relating to clause 2 of the bill, which recites some of the considerations the House of Commons will have to take into consideration when making its decision regarding the question. The first will be the size of the majority of valid votes and the second will be the percentage of eligible voters.

The leader will recall that 1996 was the last time that legislation of a constitutional nature was introduced by the government. I refer, of course to the legislation to amend the Terms of Union with the Province of Newfoundland and to change the school system in Newfoundland. In that case, the government argued that the legislation was based on a referendum held in the province of Newfoundland. If we were to apply the first test to that particular piece of legislation — that is, the size of the majority of valid votes — in the case of Newfoundland the answer would be approximately 55 per cent. As to the percentage of eligible voters, the percentage was about 52 per cent.

If those numbers were good enough for the government then, should we assume that they will be good enough for the government now or in the future?

**Hon. J. Bernard Boudreau (Leader of the Government):** Honourable senators, first, I apologize for not having the specific material in front of me. I did not anticipate that we would be involved in discussions on Bill C-20 in Question Period today. Perhaps it is my fault for not so doing, but I anticipated that since the bill was at second reading debate, we would not be dealing with it in Question Period. I apologize to the honourable senator if my comments are a little general, and I will endeavour to have the material with me in the future so I can answer more specifically.

• (1430)

Having given that preamble, honourable senators, the opinion of the Supreme Court of Canada clearly addresses the assessment of the majority as a qualitative assessment and specifically, in my opinion, disabuses us of any belief that it is strictly a mathematical calculation. That is why the Supreme Court opts out, if you will, of making a decision on that point itself, because it is not a mathematical question. If it were a mathematical question, the Supreme Court could do it. Deloitte & Touche could do it. Any number of institutions could do it. It is a qualitative issue and that is why the court, quite clearly and properly, places it in the hands of the political actors of the nation. Such a qualitative decision will depend on many factors, including, no doubt, the factors referenced by the honourable senator.

Wisely, the opinion also tells us that we are not likely to make this judgment in advance. If the judgment were capable of being made in advance, then one might do that. The Supreme Court sets out those two points clearly. First, this is a qualitative decision, and second, it is not a decision to be made in advance of the actual result.

**Senator Cogger:** Honourable senators, I apologize if I took the leader by surprise. I thought this question would be rather hot and he would be well prepared, but I will await an answer from him.

I would point out to the leader that when he refers to such things as qualitative judgments and subjective matters, those are also addressed in the bill. In other words, according to paragraph 2(2)(c), the House of Commons can take into consideration any other matters or circumstances it considers to be relevant. I do not disagree with that; it is entirely logical.

The first two criteria are strictly mathematical. The size of the majority is a simple mathematical number. The percentage of eligible voters is another mathematical calculation. It is a number and is not subjective. I would not presume, of course, and neither can the leader presume, the opinion of the House of Commons.

In the case of Newfoundland, the legislation emanated from the government; it was proposed by the government. The government took one look at the referendum results and said, "Aha! Here it is. Fifty-two per cent of the people voted and fifty-five per cent voted in favour. That is good enough. Here is the legislation."

I am asking whether the government feels itself somewhat bound by that precedent?

**Senator Boudreau:** The honourable senator has referred to two items, the size of the majority and the percentage of eligible voters. Those are mathematical results. However, the impact of those mathematical facts on the decision may well be a matter of quantitative analysis. One example comes to mind. Would 50 per cent plus 1 be the same result in the honourable senator's mind if 5 per cent of the population voted or if 95 per cent of the population voted? It still stands on the same 50 per cent plus 1. With the same mathematical figure, the surrounding circumstances might call for a different interpretation.

I conclude by saying that all factors must be taken together, as the Supreme Court has indicated in its opinion, to reach a qualitative decision. Some of those factors are pointed out very specifically in the legislation.

## STATISTICS CANADA

### POSSIBILITY OF LOWERING THRESHOLD FOR CITIES TO ACHIEVE METROPOLITAN STATUS

**Hon. Brenda M. Robertson:** Honourable senators, my question is directed to the Leader of the Government in the Senate. It concerns the importance of statistics in creating or enhancing economic development in communities. Although I am thinking specifically of the City of Moncton, my concern can affect approximately 19 other communities in Canada, and it relates to Statistics Canada's criteria for city metropolitan status.



Statistics Canada gives metropolitan status to cities with a population density of 100,000 people living in an urban core. The benefits to cities of metropolitan status are important. For example, cities with metro status appear in Stats Canada data that are available to a wide variety of users, including companies looking for new markets in which to relocate or expand. One issue is that many businesses, particularly American or foreign-based businesses looking to expand or relocate, will not make the effort to find out about opportunities in communities that do not have metropolitan status.

Many of us feel that this is a shame because many of these communities with a less populated urban core nevertheless have lots to offer businesses looking for new markets. For example, they may offer good location, a trained and stable workforce, a bilingual workforce, a good quality of living for its employees, and so on.

Will the minister ask his cabinet colleague the Minister of Industry to make representations to Statistics Canada regarding lowering the population threshold for metro status from 100,000 to 50,000, thus enabling Moncton and many other Canadian cities to be listed by Stats Canada in their data that are so widely consulted by firms looking for areas in which to expand?

Under the present system, the large cities get larger and the smaller cities do not have the opportunity to expand as they should. That is my first question.

**Hon. J. Bernard Boudreau (Leader of the Government):** Honourable senators, I thank the honourable senator for raising that interesting point. I want to be sure I understand it so I can properly convey the issue. If I understand the honourable senator correctly, the fact that certain cities do not now have metropolitan status means that some statistics are not available to them that are available to cities with status?

**Senator Robertson:** No.

**Senator Boudreau:** What is the disadvantage? Perhaps she can indicate to me the disadvantage to Moncton because it does not enjoy metropolitan status?

**Senator Robertson:** Honourable senators, when American firms expand into Canada, they rely on Statistics Canada data for guidance. Invariably they look to cities identified by Stats Canada as metropolitan areas. For instance, in the American statistics, a city is classified as a metropolitan area at 50,000 people, but here in Canada cities are not so classified until they have a population of 100,000. If we cannot get Stats Canada to change that cut-off, firms seeking to come to Canada would not even know that Moncton existed because they usually search just in metropolitan areas.

If we use that as an example, many places would be totally overlooked. We have had that experience in the City of Moncton.

The Americans go by 50,000 and we go by 100,000. I hope Statistics Canada can make that change as it would be rather nice to have compatible figures and it is important for these other communities. If the minister cannot do that, then perhaps the minister could have inserted in the Stats Canada material, an indication that the U.S. criterion of 50,000 is not the same as is used in Canada. In other words, it is 100,000, not 50,000, because most of the American firms do not know that. It is detrimental for cities that fall just short of that number. Some cities are very close to it, but are still ignored.

• (1440)

It is logical that there be a cut-off, but these cities offer essentially the same support to business as does the average metropolitan area. This matter must be considered very carefully, and I would appreciate it if the minister would use his good offices to make a determination of clarity for future investors.

**Senator Boudreau:** Honourable senators, the honourable senator raises an interesting point. The issue is not that there are different statistics available but that companies may overlook certain cities altogether without seeking statistics because of the classification of those cities.

**Senator Robertson:** The companies refer to the statistics, but in Canada only cities with populations of 100,000 are given metropolitan status, whereas in the United States cities of 50,000 are given that status.

**Senator Boudreau:** Therefore, using Moncton as an example, the honourable senator is saying that its failure to be classified as a metropolitan area places it at a disadvantage, unless the company searching goes beyond the first classification to find out exactly how many people live there and what services are available.

The honourable senator makes a good suggestion and has a good fall-back position as well. I will pursue the matter with the minister responsible.

I cannot resist saying, however, having been in provincial government in Nova Scotia for nine years, and as a result in competition for business and economic development with Premier McKenna and Moncton, that I do not think that too many businesses missed Moncton. They got their share over the years.

**Senator Robertson:** I understand and appreciate that fact. However, the international scene is very difficult. Companies use particular statistics to plot their courses of expansion and this is where we are losing out.

**Senator Boudreau:** As the honourable senator has argued, if American companies are using different criteria, they will fail to recognize some Canadian cities of equal metropolitan status. I will follow up and report back to the honourable senator.

[Translation]

## REFERENDUM CLARITY BILL

### APPLICATION OF TERMS

**Hon. Jean-Claude Rivest:** Honourable senators, if the Parti Québécois holds a referendum, the question will be on the PQ platform, sovereignty-association or sovereignty-partnership. Everything points in this direction, regardless of Bill C-20. The Parliament of Canada will therefore be called upon, pursuant to Bill C-20, to stipulate that the question is confused and unacceptable. At a certain point, the Parliament of Canada will declare that the question is not clear because it refers to a partnership or a mandate to negotiate according to the terms of the PQ platform. Does this mean that Canadian parliamentarians, in particular parliamentarians from Quebec, will therefore have to abstain from taking part in an operation that will be shown to be contrary to legislation duly passed by the Parliament of Canada?

[English]

**Hon. J. Bernard Boudreau (Leader of the Government):** Honourable senators, I would suggest at my own peril what form a future referendum question might take. The honourable senator suggests a particular form that a referendum question may take. I would not dare guess what format or what approach the Parti Québécois might adopt. However, in my view, based on past history, they will use a question that will give them the best possibility of success. They will not give clarity a high priority.

Regardless of the views expressed by the Senate and the House of Commons with respect to the form of the question, it will be up to individual Québécois to decide to what extent they want to participate in any subsequent debate. I imagine that will be a matter of personal judgment.

[Translation]

**Senator Rivest:** Honourable senators, I do not understand the minister's reply. You are asking Canadian parliamentarians, particularly Quebec parliamentarians, to adopt a resolution stating that the referendum is not clear, that it does not lead to any conclusion and that it is contrary to ethics and to a specific provision of a bill. Then you tell us that these parliamentarians will take part in an operation that would be illegal in the eyes of the Parliament of Canada. This does not make sense!

[English]

**Senator Boudreau:** Honourable senators, it would not be illegal. The legislature of Quebec has the right to ask any

question it chooses. Whatever question it asks will be a legal one. It will have legal status and the response will, I guess, have some value. However, the key to Bill C-20 is that in order for a referendum to initiate the negotiation process and, beyond that, a potential constitutional amendment, the question must be clear. The legislation provides, as the government believes, that the people of Quebec should know the view of the Parliament of Canada before they cast their vote on whatever question the Government of Quebec may frame.

The honourable senator has asked what individual Québécois and individual politicians will do if the Government of Quebec poses a question which, under the clarity bill, is found to be unclear. I do not know the answer. The bill does not speak to that specifically. I assume that they will make individual judgments about whether they will participate in the subsequent referendum debate.

[Translation]

**Senator Rivest:** Honourable senators, no matter the outcome of the referendum, a federal minister will have decided, through his vote in the House of Commons, that there would be no negotiation at all. This will be a non-event.

This is what that parliamentarian will have to decide. Where would be the logic for the Prime Minister of Canada or for a government minister to take part in an operation that the Parliament of Canada would have ruled useless? A duly passed bill will have decided that the referendum is of no consequence whatsoever. How could a federal politician then take part in such a campaign? This is completely illogical.

[English]

**Senator Boudreau:** Honourable senators, the honourable senator may be right. The Prime Minister or a minister may decide not to participate. They may well decide that this question is so flawed, so unclear, that it will not lead to any negotiations. They could decide at that point not to participate in the debate because it could lead to constitutional negotiations.

On the other hand, as I have said, any question that is asked will be legitimate. The Government of Quebec can pose a question that asks any number of things.

• (1450)

I do not find it inconceivable that federal politicians might want to express a view, even though it did not lead to constitutional amendment or negotiations. I do not know at this stage. The bill does not address that issue, nor should it. It will be left to honourable senators, to ministers, to government, to others, and to ordinary Québécois to decide to what extent they want to participate in a debate, if, in fact, the set of circumstances the honourable senator describes has occurred.



**Hon. Noël A. Kinsella (Deputy Leader of the Opposition):** Honourable senators, I should like to ask a supplementary to that question. Is the minister telling us that the federal government would not participate in a referendum campaign being conducted under the Quebec referendum law in which the No side, depending on the question, is led by the leader of the Liberal Party in Quebec? In other words, the federal government would not be supporting the No side? Is the Leader of the Government in the Senate telling us that, if such a referendum were conducted and the vast majority — say, 90 per cent — of Quebecers voted to support sovereignty association or some such thing, the bill now before us would obviate the Government of Canada joining with the other governments of Canada to negotiate with Quebec? Is he saying in terms of the latter point simply that there is no obligation and that discretion would still be in the hands of the Government of Canada as to whether to negotiate?

**Senator Boudreau:** Honourable senators, the provisions of the bill clearly provide that before any vote is taken in the Province of Quebec, or any area in the country facing those circumstances, the issue of the clarity of the question will first have been resolved.

I think I have said in response to these questions that I do not know what the position of the government, of the Prime Minister, of individual senators or members of the House of Commons might be. As to the extent they would participate in a debate following on a question that was declared to be unclear, I do not know. We are into a highly speculative area that does not impact on the thrust of the bill, which is to ensure that the question is clearly put that the people of Quebec know the view of the federal government on the question in advance of the vote, and that the obligations that arise following the vote will be determined by reference to certain specified conditions. In adhering to that procedure, Bill C-20 follows carefully the direction, instruction and advice given by the Supreme Court.

**Senator Kinsella:** So nothing is resolved.

## DELAYED ANSWERS TO ORAL QUESTIONS

**Hon. Dan Hays (Deputy Leader of the Government):** Honourable senators, I have a response to a question raised on February 24 of this year by Senator Ruck regarding provisions of the Naval Service Act and a response to a question raised on March 1, 2000 by Senator Tkachuk regarding Budget 2000, long-term benefits to taxpayers.

## NATIONAL DEFENCE

### PROVISIONS OF NAVAL SERVICE ACT

*(Response to question raised by Hon. Calvin Woodrow Ruck on February 24, 2000)*

The Naval Service Act was repealed effective February 15, 1952 at a meeting of The Committee of the Privy Council held February 7, 1952 and as recorded in The

Revised Statutes of Canada 1952, Volume VI Appendices and Index.

Qualifications for enrolment in the Canadian Navy are governed by the Qualifications for enrolment in the Canadian Forces as laid down in QR&O Volume 1, Chapter 6, Article 6.01 — Qualifications for Enrolment. With the exception of Service in Submarines for women, there are no restrictions to employment for visible minorities and women in the Canadian Navy.

## BUDGET 2000

### LONG-TERM BENEFITS TO TAXPAYERS

*(Response to questions raised by Hon. David Tkachuk on March 1, 2000)*

#### Question 1:

I found information on the Web site for an income of \$40,000, but I was not able to find anything for an income of \$45,000.

#### Response:

A single individual making \$45,000 a year will see their net federal taxes reduced by \$414 in the first full year of the implementation of tax changes (i.e. 2001).

By the fifth year, in 2004, there will be a tax saving of about 13 per cent, or \$935.

Since full tax reduction does not start until July 2000, tax reductions in 2000 will be a little more than 50 per cent of the tax savings in the first full year of impact.

#### Question 2:

What exactly is the Web site illustrating? Why doesn't it include increases in CPP contributions?

#### Response:

The Web site provides information on the impact of the five-year tax plan for typical Canadian taxpayers in the first full year of implementation (i.e. 2001) and in the final year of implementation (i.e. 2004).

CPP premiums are not a tax, and as such should not be compared to personal income taxes. CPP premiums are pension contributions and go straight into the CPP fund, which is not part of the consolidated revenue fund. The CPP is a joint federal-provincial program where all governments have agreed to raise premiums to make the plan sustainable.



## ORDERS OF THE DAY

### BUSINESS OF THE SENATE

#### Hon. Dan Hays (Deputy Leader of the Government):

Honourable senators, under Government Business in the Orders of the Day, I should like to call Order No. 3 first, the order dealing with Bill C-2, to be followed by Nos. 1 and 2, then to be followed by the three items under Reports of Committee. Following those items, we will then carry on with the orders shown in the *Order Paper and Notice Paper*.

### CANADA ELECTIONS BILL

#### SECOND READING

##### On the Order:

Resuming debate on the motion of the Honourable Senator Hays, seconded by the Honourable Senator Adams, for the second reading of Bill C-2, respecting the election of members to the House of Commons, repealing other Acts relating to elections and making consequential amendments to other Acts.

**Hon. Consiglio Di Nino:** Honourable senators, I should like to take this opportunity, as we debate this bill, to briefly discuss the question of political financing. More specifically, I wish to raise the question as to whether political parties should be totally and directly funded from the public purse.

As those of us involved in politics on a daily basis are aware, raising money to fund political activities is no easy task. It never has been, and I do not suppose it ever will be. Our predecessors in this place called political funding the sinews of war, and with good reason. Politics is a constant battle which costs money — usually a fair bit of it. Since Confederation, the search for this funding has occasionally led to some notorious scandals. One of the first of these was the Pacific scandal in 1873 involving campaign contributions and a contract to build the Canadian Pacific Railway. Equally celebrated was the Beauharnois scandal, which came to light in 1931-32. Like the Pacific scandal, it too involved political contributions. This time, however, it was in exchange for permission to divert the St. Lawrence Seaway to benefit a hydroelectric company.

In both of these cases, honourable senators, the need or perceived need for money to pay for political activities caused people who no doubt knew better to do things they would not ordinarily have done.

In recent years, if memory serves me correctly, we have been spared, thankfully, major fundraising scandals — at least at the federal level. Provincially, it is another story. In B.C., the NDP government was caught up not long ago in the Bingogate affair. In Ontario, honourable senators will recall that former premier David Peterson took quite a beating over the Patti Starr affair.

Outside Canada, numerous politicians have been badly damaged by political fundraising scandals. Helmut Kohl is a perfect example. Mr. Kohl was once a widely respected elder statesman and known around the world as the "Unification Chancellor." Now, with the fundraising scandal in Germany that has brought things crashing down around his ears, they are calling him "Don Kohleone."

In Israel, Prime Minister Ehud Barak is in a similar situation. This is the man who has taken on the enormous task of trying to solve the Middle East problem. Now, he must also deal with the fact that both he and his party have, as I understand it, been found guilty of major breaches of that country's election finance laws.

Closer to home, just a short flight as the crow flies, Messrs Clinton and Gore have been heavily criticized for, among other things, using the American White House as a bed and breakfast for wealthy contributors to the Democratic Party.

In each of these cases, honourable senators, and others which come to mind, people's reputations have been tarnished, their careers have been ruined, and the rules of propriety and proper ethics have been bent and ignored. For what? For the wherewithal to fill party election chests, for the sinews of war.

Honourable senators, while Canada may have, in modern times at least, escaped major scandal, the pressures which inevitably lead to them are still very much here. In fact, I would argue they are getting stronger. The most significant of these pressures is not, as many are prone to believe, greed or personal avarice. Thankfully, this kind of thing has been rare in this country. The most important pressure is the potent combination of desire for power and rising costs.

It should come as no surprise to most honourable senators when I say that political activity is getting more expensive. Every year, our parties are finding it more difficult and onerous to raise funds. Obviously, the governing party always has an easier time raising money. There is nothing unusual about that. The party in government always has the advantage, but for the others it is another matter.

• (1500)

If the cost of doing politics keeps rising, the question that comes to mind is simply this: Where will all the money come from? The answer, under our system, is the Canadian taxpayer.

Honourable senators, there is a great myth out there that only a small number of Canadians fund political parties. That is just not true. What is true is that only a small percentage of people and corporations make direct contributions to political parties. Indirectly, all Canadian taxpayers, whether they want to or not, whether they think they do or not, fund political parties. They do so through all of the different tax credits, tax refunds and tax-deductible expenses we have put in place over the years to encourage people to support politics.

Most of the donations people make to candidates are small — \$50, \$100, perhaps \$250. However, some contributions are big. By “big” I mean tens and hundreds of thousands of dollars. According to Elections Canada, for example, in 1998, two unions gave over \$100,000 each to the NDP, and seven companies each gave \$75,000 and more to either us or our friends across the aisle.

Honourable senators, when I am out and around and the subject of political finance comes up, people often ask me, “What do people who give big amounts of money to political parties get in return?” Some people wonder if giving money to politicians and parties is like taking out insurance — political insurance, especially if you are in business. In other words, if I am a businessman and a candidate asks me to contribute, I say yes just to be on the safe side. You never know — I might need their help one day.

Honourable senators, this is not as far-fetched as it sounds. Just before Christmas some of you perhaps saw the article in *The Globe and Mail* about a businessman who had done just that. A fellow in Quebec gave some money to the Prime Minister's campaign fund — but, for that matter, it could have been anyone's campaign. Later it was revealed that he had subsequently received a large federal grant. When journalists began putting two and two together, they asked this man for his thoughts. He said that he donated in order to encourage Mr. Chrétien to do a good job. That is what he said. He then went on to say:

We never know who's going to win. So we're always very prudent. That way, if someone gets in power, he can't be angry with us for having ignored him.

If you take a moment to think about this, honourable senators, this is indeed a sad reflection on the state of Canadian politics, scandals or no scandals. We hear statements such as, “I gave money to a candidate because I was afraid. I was afraid that if I did not contribute to his war chest, and he won, I would be ignored if I needed help or rejected if I was looking for a federal grant.”

Honourable senators, this makes a person question how many applicants and recipients of the billions in HRDC largesse thought the same way.

This type of thinking is apparently quite prevalent among our friends south of the border as well — at least if *Time* magazine has it right. *Time* has been publishing a series of articles and stories under a sort of general theme of the winners and losers in the political donation business. I must say that it is not a very pretty picture. In fact, some of the reporting is quite shocking. I heartily recommend these articles to honourable senators.

By the way, I was interested to read in *The Globe and Mail* this morning that Mr. Gore has seen the light regarding public funding. He is now proposing to establish what he calls a Democracy Fund, which would be underwritten in part by 100 per cent tax-deductible contributions from individuals and corporations.

Getting back to corporate and union donations, let me say, lest I be misunderstood, that I have absolutely no desire to cast aspersions on anyone or any company or union because they donate money. Everyone has a right to contribute to the party of their choice. I have no argument with this. It is our system. I have done my fair share of fundraising and contributing.

Honourable senators, the problem is that big offerings of money to politicians and political parties raise eyebrows. Whether we like it or not, when someone offers tens and hundreds of thousands of dollars to a political party, people are tempted to ask what they are receiving in return for their generosity. However — and again I wish to make this point clear — contributions, whether they be from individuals, companies or unions, are not in and of themselves wrong. Far from it.

Giving money to political parties does not mean you are out to undermine democracy or trying to buy a government — at least, thank God, not in Canada. In my opinion, money does not buy influence in this country. It does, however, procure access. I believe we can all agree with this.

Be that as it may, it is my belief that unions or corporations in this country do not see giving money to political parties as a means of exerting undue or inappropriate influence, and with good reason. Take a look at any map and just think about the number of places where wholesale corruption is the only way to do business; then think about Canada.

Honourable senators, I have strayed a little from my point. That is to say, however we dress this issue up, and dress it up we do, the reality is that most of the money used to finance politics comes from only one source, and that source is the Canadian taxpayer through the public purse. In fact, I would argue — and I think the figures back me up — that with all of the different tax breaks, rebates, subsidies and so forth, parties actually receive approximately 60 per cent of their funds each year from the public coffers. If I am correct in this, it begs the question: Should we institute a system of total public funding for political parties?

Public funding would certainly be more efficient and transparent, and I believe it would also go a long way toward alleviating public cynicism and distrust. The reality here is that politicians and political parties are caught in a kind of Catch-22 with this issue. Money is crucial to making our political system work. At the same time, however, it taints the system because of the suspicions associated with its collection and use.



Another problem associated with political financing — one, by the way, this bill fails to address — is the lack of transparency and accountability for riding association books and records. Riding associations, as most honourable senators know, are not required to audit and publish their books. This makes their records an obvious source of potential misuse, creating further suspicions in the public's mind. It seems to me that as a vast majority of the money in riding association accounts comes from the public coffers, by rights it should be subject to the same scrutiny as candidates' books and those of political parties. It is only logical.

Another issue of concern to many is indirect or third-party involvement in promoting a cause. On one side we have those who support the rights of people to properly defend a position or clarify a point. On the other are those who believe third parties are too often guilty of inappropriate interference on behalf of a political philosophy. How we balance these competing views is a difficult issue. Whether we adopt full public funding or stay with the status quo, third-party advocacy must be clearly defined and regulated.

Honourable senators, full public financing is not a magic formula and certainly will not stop all of the misuses and abuses of the system. However, I believe it would go far in mitigating the suspicion and perception of inappropriate influence. Public funding would allow political parties to plan ahead, budget properly and avoid going into debt. It would promote democracy and competition by giving smaller parties access to stable sources of revenue. Indeed, public funding would not cost the taxpayers much more.

The key to the success of public funding, from my perspective, is public acceptance. As legislators, we obviously could impose public funding on people, but if it is to work the public must accept the idea. I believe they will if we explain and debate the issue openly and honestly here in Parliament. When people understand what is happening, when they have faith that there is no backroom dealing going on and no fiddling with the rules, I think they will be open to supporting the idea. This is particularly so if a fair and transparent formula is used to appropriately distribute funds to political parties.

However, honourable senators, if we decide to ask taxpayers to fund our political activities, we must give them a rigorous commitment, backed up by some strict rules, to use their money wisely. Political parties waste large amounts of money each year, as we all well know. In my humble opinion, with a little effort and willpower, all of our parties could get by with much less than they spend now, particularly in election campaigns.

• (1510)

Honourable senators, the time has come to take political funding out of the shadows and put it into the public domain. By doing so, we reduce both the pressures and the opportunities for misuse. This would be a win-win situation for everyone. For the moment, I am just raising this issue in principle. However, it is

time to take another look at it. I urge and hope that the committee will investigate this issue during its forthcoming hearings. When we revisit this bill on third reading, subject to witness comments and reactions, I may raise certain specific proposals for the consideration of honourable senators.

**Hon. Sheila Finestone:** Honourable senators, it is a pleasure to participate in the debate on second reading of Bill C-2 and, specifically, to deal with the issue of financing.

This is a large bill. It is an extensive relook at the Electoral Act. I was pleased to hear our colleague discussing the financial implications and the planning that was involved, which are not easy issues. We also heard from another colleague on the other side of this house who discussed another aspect of the bill. Today, I should like to focus on the changing political environment as a result of the initiatives that have been taken over time to ensure that women share the democratic responsibilities with respect to governance in this country and the politics of this land.

Honourable senators, this is an important aspect of a true reflection of the society in which we live. It is necessary for us to focus on that issue because much of what is contained in Bill C-2 in this regard relates to the focus of the direction that they have taken. Many women in this Senate and in the other place have been actively involved in effecting change. In so doing, they have had the support of their partners and many of the men who sit here today as their colleagues in both houses. This is not only a concern of the reflection of equality and equity within the halls of government here in Canada, it is also a worldwide concern.

Honourable senators, I ask you to take a moment to think about what international parliamentarians are saying around the world with respect to review and promotion of the promise of representative democracy by women's groups around the world.

In November of 1997, it was my particular privilege to head a delegation to India with Senator Don Oliver of this place. We took with us the findings which resulted from the discussions and the hearings that had taken place during the Royal Commission on Electoral Reform. At this international conference in New Delhi, India, we focused on the democratic deficit resulting from the low representation of half of the population — that is, women — in the Parliaments of most of the world governments. The conference examined how society, as a whole, can benefit from a new contract for politics based on partnership. It was an important moment. It was a focused conference, with equal numbers of men and women present.

Our Senate and House of Commons brought much of our findings to bear on the issues of social contract for politics, the image of women parliamentarians in the media, women's political and electoral training, and the financing of women's electoral campaigns. There is nothing new in the questions and problems that face all parliamentarians, at whatever level, when it comes to financing campaigns and financing their own responsibilities.



That particular session was the first worldwide, high-level practical follow up of one of the chapters of the Beijing Platform for Action, which I had the privilege of heading for Canada and where I signed our Canadian government's commitment. I was pleased to see the Inter-Parliamentary Union take up this challenge as the first action following the Beijing report. Later, I will find the time to table in this house an extensive report that was prepared on politics and women's insights. Contained in that comprehensive report, we find a commonality of concerns across the world regarding the issues of financing and electoral reform. In that light, this particular reform is extremely important.

The Honourable Senator Lucie Pépin has been actively involved in this issue. She has been pursuing equity and equality of opportunity for women as partners in our society. She was to have spoken today. Unfortunately, however, she is unable to be here, so I have agreed to present her report to you. It is a good analysis of the topic, and I am sure you will find it of great interest.

[Translation]

We live in a strong and very dynamic democracy. Our institutions, laws and practices serve as models to the nations of the world.

Elections Canada puts its know-how at the service of other countries all over the world. Our Charter of Rights and Freedoms is studied and copied, by both long-established democracies and new ones. Our legal system is deemed so fair that Canadian judges act as experts with a large number of governments. I am very proud to be part of a government that ranks so high among democracies.

We gained that reputation through reflection and work. This is the third time that the Canada Elections Act is amended since 1992.

The Canadian lawmaker is always trying to improve the fairness, transparency and efficiency of our electoral system. The 1993 amendment provided fairer access to polling stations and established public information and awareness campaigns. It also gave the vote to judges, persons with disabilities and inmates serving less than two years and authorized the establishment of a permanent voting list.

Bill C-2 follows in this tradition of well-considered and gradual administrative reform to make the Canadian electoral system fairer and more transparent.

[English]

Honourable senators, Bill C-2 continues in this tradition of solid and incremental administrative reforms aiming to increase the fairness and transparency of our electoral system.

At its heart, this bill is really an effort to reorganize and update the Canada Elections Act in order to make it easier to understand and more relevant for today.

First, Bill C-2 aims to offset the impact of inflation, since the act was introduced in 1974, by raising expense limits.

Second, technological advances have changed the electoral process, and Bill C-2 recognizes the use of new technology in its provisions.

Third, with several changes having been made to the Canada Elections Act throughout the 1990s, this bill serves to unify and rationalize their various provisions into legislation that is more coherent and user friendly.

Fourth, the Canadian courts struck down two provisions of the Canada Elections Act, ruling that they contravene the Canadian Charter of Rights and Freedoms. I was pleased to note that. In response, this bill will amend the act with regard to black-out periods for polls and advertising, as well as third-party spending on advertising during national election campaigns.

Fifth, Bill C-2 makes explicit the inclusion of a candidate's family care expenses as an eligible personal expense for reimbursement during election campaigns.

Sixth, Bill C-2 standardizes voting hours for Canadians across this vast land. It also takes steps to protect certain categories of people at risk — that is, for example, women living in shelters — by authorizing that their current addresses do not appear on the voters' list.

Finally, this bill reintroduces the concept of vouching, whereby individuals can register to vote on the day of the election without proper identification, provided another individual can vouch that they are who they claim to be.

• (1520)

These are the major changes proposed in Bill C-2 and I support the proposed legislation as I believe it will improve the transparency, the accessibility and the fairness of our electoral process. Bill C-2 proposes sound administrative changes that are the product of thorough reflection and debate.

Having said that, Senator Pépin also believes that, with this bill, no one in Canada can accuse us of being radicals or revolutionaries. We are a model of democracy, and we have arrived at this place by slow, methodical and incremental change. However, I would make the observation that if we continue with this slow, modest and methodical incremental change, it will take another 100 years for women to reach equity in this place.

To be radical and revolutionary would mean striving for a dream, striving for something currently beyond our reach, but something we strongly believe could and should come about. I notice many honourable senators nodding their heads in agreement that gender equity should and could come about. Equal political representation for women and enacting legislation to facilitate that would be truly revolutionary. We have a few ideas as to how that could be done.

After all, this is Canada, a country of restraint, good manners and moderation. We think before we act. We ponder the pros and cons and we engage in polite debate, certainly in this chamber we do. We have certainly had a long time to reflect on the issues related to greater equity in political representation.

Honourable senators, after 75 years of political representation for women in Canada, we are still a long way from gender parity in federal politics. Only 20 per cent of all members of Parliament and 30 per cent of senators are women.

Political history in Canada and around the world has taught us that simply guaranteeing procedural fairness in the electoral system and applying the same rules equally to both men and women will not achieve gender parity. We have been down that road, and it has taken us seven decades to break the 20 per cent line.

As good Canadians, we have studied and debated this issue with diligence. The Royal Commission on Electoral Reform and Party Financing spent nearly three years, from 1989 to 1991, commissioning research and holding hearings with women across the country in order to fully understand the obstacles they face in Canadian politics. The commission has organized a special workshop with female politicians, past and present, in order to benefit from their collective experience.

On the basis of this research, the Royal Commission concluded that the origins of women's underrepresentation lie less in the voting booth than earlier in the electoral process. Securing party nominations and funding political challenges were cited as the greatest barrier for women and other underrepresented minorities. We speak not only for women but for all minorities in our society.

In 1991, the Lortie commission put forward a number of specific recommendations. These recommendations were formulated as articles to amend the Canada Elections Act. Several of the proposed amendments dealt with measures to facilitate women's entry into politics. The report received unanimous support from every member of the Royal Commission.

Let me outline a few of the recommendations of the commission with regard to women.

[Translation]

By way of example, as regards the costs of caring for a child or another member of the family, women often bear a greater share of family responsibilities than men. Child care is considered a factor that adds a financial burden to women seeking election. The amendment proposed provides that spending on the care of a child or other family member would be part of the personal spending eligible for refund. Happily, a provision of this sort is found in Bill C-2.

As concerns authorized leave, seeking party nomination and running in an election are basic acts of citizenship in a

democracy. Many people, and especially women, have little job security and heavy family responsibilities.

The uncertainties associated with an election can represent a major obstacle for them when they consider running. The Canada Elections Act and Bill C-2 guarantee the right to authorized leave to seek nomination or to run in an election to all employees whose employer is subject to Part III of the Canada Labour Code.

The commission was of the opinion that all employees, not just those under federal jurisdiction, should benefit from job security when they decide to enter a campaign. That is why the commission proposed extension of the right to leave to all employees in Canada. It felt that, since this legislation governs the conduct of federal elections, it would have to apply not only to public sector employees coming under federal jurisdiction, but all employees in Canada.

Another issue related to women, who encounter enormous obstacles when seeking nomination as a party candidate, particularly when the seat is certain or probable. They tend more often than men to run into competition at the nomination stage. Enormous resources are, moreover, required to gain the candidacy in a winnable riding.

[English]

**The Hon. the Speaker *pro tempore*:** I regret to inform Senator Finestone that her speaking time has expired. Is the honourable senator seeking leave to continue?

**Senator Finestone:** Honourable senators, I would seek leave to continue.

**The Hon. the Speaker *pro tempore*:** Honourable senators, is it agreed?

**Hon. Senators:** Agreed.

**Senator Finestone:** It is my pleasure to provide honourable senators with the balance of Senator P  pin's eloquent statement.

[Translation]

Honourable senators, women tend to lack financial resources and the necessary networking for success.

Short of imposing quotas, it is incumbent upon the political parties to present more women candidates in winnable ridings, and to help them get through not only the nomination stage but the election. The Royal Commission concluded that female representation would increase if incentives were offered to political parties that supported women for election to the House of Commons.

The commission therefore proposed raising the reimbursement rate for campaign expenses incurred by a party by the percentage of their MPs who were female.



[English]

Short of legislating quotas, I would suggest that there must be the political will to have more women run, and that there should be a way by which parties would reimburse election expenses based on the percentage of members in the House who are women.

Finally, and perhaps most importantly, the royal commission recommended adopting limits on nomination campaign expenses and making contributions to nomination campaigns tax deductible. It was thought that these measures would permit individuals with more modest and diffuse networks of campaign contributors to compete more equitably.

In summary, these were the recommendations of the commission in its attempt to remove major obstacles facing women's entry into politics. Since 1991 when the commission tabled its report, we have acted like true Canadians. We have diligently studied the recommendations, we have held polite debates on the issues raised, and we have shelved all but one recommendation because the proposals seemed too radical and revolutionary.

Honourable senators, let us not lose sight of the fact that it is the year 2000, the dawn of a new millennium, and that only 20 per cent of elected representatives and only 30-odd per cent of senators are women. Is striving for gender equity in Canadian politics so radical? Were the recommendations of the royal commission so revolutionary? I believe we all think not.

• (1530)

We applaud the initiatives of the federal parties to move forward to increase gender equity. We are prepared to support in every way Bill C-2 and the changes it will bring about.

I regret that our legislated approach to electoral reform has been so truly Canadian and that we have been so polite and thoughtful and moderately restrained, but we have not had the courage to totally go after the principle in which we believe.

Honourable senators, I have expressed our sense of being proud Canadians and, as a dreamer, I believe we cannot only achieve gender equity in political representation but that one of these days we will realize it. I hope it does not take another seven decades.

[Translation]

Honourable senators, in short, should we support Bill C-2? Of course, its purpose is to make necessary and timely changes in our electoral system. However, let us not lose sight of the fact that it is also a prudent and moderate bill. I will continue to hope

that next time we can go further and that is what I will be working towards.

As a proud Canadian, I want to live in the most dynamic and the fairest democracy in the world. I am sure that you share this dream and that together we will work to make it come true.

[English]

**Hon. Noël A. Kinsella (Deputy Leader of the Opposition):** Honourable senators, I rise on a point of order. The point of order relates to the reading of a speech in the chamber that is the speech of another honourable senator when that honourable senator is not in the chamber. We should obtain a ruling from the Chair as to the exact rule that relates to this circumstance.

I know the matter has been discussed by Speaker Molgat's advisory committee, but I think that the usages and practices of this place are quite clear. I know that while Senator Finestone and many on this side, including myself, agree with many of the points that were made in the speech, very often Senator Finestone would say "I" and "we". In the context, one could understand that it was the view of Senator Finestone as well, since we know her position on these matters. However, there may have been other times when "I" was used, and it might not have been Senator Finestone's view and we would not know that.

At any rate, I wanted to put this point of order on the record, and perhaps it could be taken under advisement.

**The Hon. the Speaker *pro tempore*:** Honourable senators, I thank Senator Kinsella for raising that issue. I thought about it while Senator Finestone was giving the speech. I will do my homework and also seek advice on the matter. I will take it under advisement.

**Hon. Anne C. Cools:** Honourable senators, the matter of Senator Kinsella's point of order is before this chamber and some senators may wish to speak to it.

**The Hon. the Speaker *pro tempore*:** Does the Honourable Senator Cools wish to speak at this time?

**Senator Cools:** Honourable senators, perhaps Senator Finestone should provide some clarification. I did not hear all of the speech she presented. I assumed it was her speech, yet Senator Kinsella's point is very interesting and extremely compelling.

It is my understanding that when it comes to Parliament as an institution, no one can speak or vote for another senator. In other words, one cannot vote by proxy and one cannot speak by proxy.

If a senator is suddenly stricken mute, it would entail a decision by the chamber to deviate from the norm, but, in my understanding, that is what Parliament is all about.

Can we have some clarification from Senator Finestone as to exactly what just happened? I was under the impression it was Senator Finestone's speech. Before Her Honour receives the point of order, we should really find out what happened.



**Senator Finestone:** Honourable senators, I hope I have not inadvertently breached any rules of this house. If I have, I apologize, but I should like to explain that Senator Pépin and I have been active colleagues in both Houses and, long before that, in our public lives before we ran for office. We have been advocates for the rights of women and the promotion of women in issues of equality and access within all aspects of public life, whether it be as parliamentarians or leaders in any of the causes which women find so important in the areas of family and society.

Senator Pépin came to speak to me just before she had to leave on government business. She was scheduled to speak to this particular point on our daily agenda in the Senate. I was looking forward to speaking as well because I had just come back from reviewing the findings of 190 countries on the issue of women and their place in the world's view of life as a parliamentarian and in access to Parliament. I have here on my desk a book which I intend to table within the foreseeable future.

In essence, Senator Pépin showed me her text. I was totally in agreement with what she had to say, and so I decided that I would collapse both speeches into one and that I would not speak twice. I would speak with a certain degree of knowledge due to my presence in Beijing and the follow-up I undertook through the Inter-Parliamentary Union. I have also been involved in publications and studies related to this important bill. The Liberal Party of Canada at its recent convention had an in-depth discussion on the role of political parties in promoting equality for women and why nomination meetings should have a cap and what we should be doing in terms of this house.

In essence, honourable senators, I collapsed two speeches into one. I was totally in agreement with my colleague's point of view. I hope that I did not breach any rules and did not do anything terrible. I thank Senator Kinsella for alerting me to something about which I must learn as I try to manage my role in this place.

**Senator Cools:** Honourable senators, I thank Senator Finestone for what she has just said, but she has told us more about the reasons for doing this than for what actually happened and what was done.

Senator Finestone also went on to speak on the substance of the issue, about which I understand she has felt passionately for some time. The chamber still deserves some clarity. I understand that both Senator Finestone and Senator Pépin sat in both chambers and both are advocates of women and the promotion of women. However, within the Senate or within Parliament, parliamentary personalities are indivisible. It is not possible to split a parliamentary persona.

Having said all of that, I just wish I had listened closely. I was, quite frankly, still working on my notes for the two supply bills coming up in a few moments.

What really happened? Senator Finestone gave a speech that she may have pirated, borrowed or stolen, or whatever, from Senator Pépin. If that is what happened, then it would be Senator Finestone's speech. However, if Senator Finestone were speaking for Senator Pépin or attempting to speak through the voice or the mouth of Senator Pépin, that would be very irregular, out of order and not the sort of thing we should support or promote.

I am also very mindful of the fact that Senator Finestone intends no wrong. I believe she is attempting essentially to do a favour for a friend senator.

• (1540)

I think that we should take these variables into account. However, I reiterate the point that the position and task of a member of Parliament is indivisible. The privilege of a member to speak here is neither negotiable nor transferable, and neither is it transferable between members.

Perhaps we can proceed from there. I know that we do not usually adjourn debates such as these, but I have no doubt that there are senators who would like to look at the record to see exactly what happened. I raise this matter because there is ever more pressure on members to stand aside so that other members can do things in their stead. It is a serious problem.

Is it possible to adjourn this debate?

**Hon. Sharon Carstairs:** Honourable senators, I would not like to leave the impression that Senator Finestone did something highly unusual, because she did not. As someone who was educated in a convent, my husband tells me that I am a compulsive rule follower. I do tend to pay close attention to rules. However, I can think of two circumstances within the last year not dissimilar to the situation in which Senator Finestone found herself.

Just a few weeks ago, for example, Senator DeWare made a speech on behalf of Senator Lavoie-Roux because, as we all knew, Senator Lavoie-Roux was ill and could not make her comments in this chamber. I also remember an occasion when Senator Simard began a speech but, due to his speech difficulties at the time, Senator Kinsella assisted Senator Simard by completing the speech for him.

Those are positive things. It is that kind of interpretation of the rules that makes this place so very special. This is a special chamber because we want to hear from everyone. Even when, on occasion, they are not capable of expressing their own views, we are still willing to listen to those views.

I particularly appreciated the speech by Senator DeWare because it was very important that Senator Lavoie-Roux's message be given to all senators. I do not think the study of the bill would reach the depths that it should without those views.

Therefore, while I certainly welcome an initiative on the part of the Speaker *pro tempore* to deal with this issue, I do not want to give Senator Finestone the impression that she has violated the rules.

**Hon. Dan Hays (Deputy Leader of the Government):** Honourable senators, I hesitate to rise on this point of order because we have already spent quite a bit of time on it during a busy day. However, I thank Senator Kinsella for raising it.

On behalf of the government side, I agree that it would be useful for the Speaker to take this matter under advisement or to respond now. Senator Finestone gave a fulsome explanation of what she had intended to do.

With regard to the points made by Senator Carstairs, I believe that on some of those occasions leave was sought and granted for the delivery of a speech for another senator. This is a different situation.

I support the reference. I understood the speech to be a mixture of contributions from Senator Pépin and Senator Finestone. I do not know whether that offends the rule. I look forward to the ruling by the Speaker.

I do not believe that a point of order can be adjourned. I think that we have to make our contributions now and the Speaker will determine whether to take the matter under advisement. However, I hope that we can get back to the bill because I am hoping that the bill will be given second reading today.

**Senator Cools:** Honourable senators, the current debate is on a point of order. I was proposing the adjournment of the point of order with debate on the bill continuing. The bill could be referred to committee and the question of who can speak for whom and when could continue, giving the Speaker ample time to receive submissions and contemplate the issue.

**Senator Kinsella:** Honourable senators, I would not want this point of order to impede the ordinary progress of the bill. I would be prepared to withdraw my point of order, if I have leave to do so.

**The Hon. the Speaker pro tempore:** Honourable senators, is leave granted to withdraw the point of order?

**Hon. Senators:** Agreed.

**Hon. Lorna Milne:** After all of that, will the senator accept a very short question?

**Senator Finestone:** Yes.

**Senator Milne:** The purpose of my question is solely to set the record straight on how long it has been since women first arrived in Parliament.

Is the senator aware that the first woman was elected to the House of Commons in 1929, almost eight decades ago, and that it has taken us almost 80 years to reach the grand total of

20 per cent female representation in the House of Commons and 31 per cent in the Senate?

**Senator Finestone:** Honourable senators, first, I must admit that, as I was barely born at that time, I was not aware of that. Second, I was not even a person at that time. We had to go to London, England to get the right to be a person and therefore be allowed to sit in this house.

On behalf of all honourable senators, I thank the Honourable Senator Milne for bringing that information to our attention.

**Senator Hays:** Honourable senators —

**The Hon. the Speaker pro tempore:** Honourable senators, if Senator Hays speaks, his speech will have the effect of closing debate on the motion for second reading of this bill.

**Senator Hays:** Honourable senators, I wish to thank those honourable senators who have spoken for their contributions. A number of issues have been raised at second reading with respect to women in Parliament, with respect to election financing, in particular at the local association level, and also with respect to third-party spending. I believe that these matters can be explored in committee and I look forward to that.

Motion agreed to and bill read second time.

REFERRED TO COMMITTEE

**The Hon. the Speaker pro tempore:** Honourable senators, when shall this bill be read the third time?

On motion of Senator Hays, bill referred to the Standing Senate Committee on Legal and Constitutional Affairs.

• (1550)

## THE ESTIMATES, 1999-2000

### REPORT OF NATIONAL FINANCE COMMITTEE ON SUPPLEMENTARY ESTIMATES (B) ADOPTED

The Senate proceeded to consideration of the third report of the Standing Senate Committee on National Finance (Supplementary Estimates (B) 1999-2000), presented in the Senate on March 23, 2000.—(*Honourable Senator Murray, P.C.*)

**Hon. Lowell Murray** moved the adoption of the report.

He said: Honourable senators, this is the first of three reports from the Standing Senate Committee on National Finance that will be before honourable senators in quick succession this afternoon.

These reports form the background for two interim supply bills which will be before us for second reading later today. I intend not to speak to the three reports but, rather, to reserve the few comments I have for the second reading debates on the interim supply bills.



**Hon. Anne C. Cools:** Honourable senators, I should like to add to what Senator Murray said by pointing out that the two supply bills will be before us in a few minutes' time. Rather than use the time of the Senate at this stage, I would point out that there are three reports now before the Senate, those being orders No. 1, No. 2 and No. 3, under "Reports of Committees". That being the case, I would suggest that we deal with them in the order they appear on the Order Paper and we can have a full debate when the bills themselves are before us.

**Hon. Noël A. Kinsella (Deputy Leader of the Opposition):** Honourable senators, I do not want to let the occasion pass us by without making the point that, should this chamber not adopt this third report of the National Finance Committee, and should it not adopt the fourth report of the National Finance Committee, and should it not adopt the fifth report, it might bring home, very starkly and clearly, if clarity is required, the message that the Senate of Canada has control of the executive's use of the public purse. I shall return to this subject when we deal with the bills.

**The Hon. the Speaker pro tempore:** Is it your pleasure, honourable senators, to adopt the motion?

**Hon. Senators:** Agreed.

Motion agreed to and report adopted.

[Translation]

#### THE ESTIMATES, 1999-2000

##### REPORT OF NATIONAL FINANCE COMMITTEE ON MAIN ESTIMATES ADOPTED

The Senate proceeded to consideration of the fourth (final) report of the Standing Senate Committee on National Finances (Main Estimates, 1999-2000) presented in the Senate on March 23, 2000.—(*Honourable Senator Murray, P.C.*).

**Hon. Lowell Murray** moved the adoption of the report.

Motion agreed to and report adopted.

[English]

#### THE ESTIMATES, 2000-01

##### REPORT OF NATIONAL FINANCE COMMITTEE ON MAIN ESTIMATES ADOPTED

The Senate proceeded to consideration of the fifth report (interim) of the Standing Senate Committee on National Finance

(Main Estimates 2000-2001), presented in the Senate on March 23, 2000.—(*Honourable Senator Murray, P.C.*).

**Hon. Lowell Murray** moved the adoption of the report.

Motion agreed to and report adopted.

#### APPROPRIATION BILL NO. 4, 1999-2000

##### SECOND READING

**Hon. Anne C. Cools** moved the second reading of Bill C-29, for granting to Her Majesty certain sums of money for the public service of Canada for the financial year ending March 31, 2000.

She said: Honourable senators, I rise today to speak to second reading of Bill C-29, an act for granting to Her Majesty certain sums of money for the public service of Canada for the financial year ending March 31, 2000. Bill C-29 is known as Appropriation Act No. 4, 1999-2000, and will provide supply in the amount of \$3.1 billion as set out in the Supplementary Estimates (B) for 1999-2000. They are the final Supplementary Estimates for this current fiscal year that ends on March 31, 2000.

Honourable senators will recall that Senator Dan Hays introduced the Supplementary Estimates (B) 1999-2000 in the Senate on March 2, 2000. The Senate referred them that same day to the Standing Senate Committee on National Finance. Our committee subsequently met on March 21, 2000, at which time, in the absence of Senator Lowell Murray, I had the honour of chairing the meeting. At that meeting, officials from the Treasury Board Secretariat appeared. The officials were Mr. Keith Coulter, Assistant Secretary, Planning, Performance and Reporting Sector, Mr. Kevin Lindsey, Director, Expenditure Operations, and Mr. Andrew Lieff, Senior Director, Expenditure Operations. Those officials were open, helpful and informative.

On March 23, 2000, Senator Murray presented the National Finance Committee's third report, that being the report on the Supplementary Estimates (B) 1999-2000. Later the same day, the Senate adopted that report.

Honourable senators, from a fiscal planning perspective, the amounts set out in the Supplementary Estimates (B) are provided for within the revised planned spending levels for 1999-2000 as the government announced in the February 28, 2000 budget. Specifically, these Estimates seek Parliament's approval to spend \$3.1 billion on those expenditures provided for in the February 1999 budget but which were not specifically identified or sufficiently developed in time to ask Parliament's approval in the Main Estimates 1999-2000 or the Supplementary Estimates (A) 1999-2000, and on new expenditures identified in the February 28, 2000 budget.



Honourable senators, I shall now describe some of the major items in these Supplementary Estimates (B) 1999-2000. They include a budgetary item of \$900 million to the Department of Industry for a grant to the Canada Foundation for Innovation, which grant was announced in the 2000 budget, and provides additional financial support for the modernization of Canada's research infrastructure in the areas of health, environment, science and engineering.

There will be \$454.9 million in additional funding to the Department of National Defence in support of essential operating and capital requirements, including the compensation for the increases to the salaries of uniformed personnel and the payout of accumulated military leave, equipment maintenance, upgrade and replacement, construction at defence facilities, and major capital acquisition program activities.

The items also include \$240 million to the Department of Agriculture and Agri-Food Canada for payments to the provinces of Saskatchewan and Manitoba for emergency farm relief for eligible producers. Honourable senators are aware of the conditions of western farmers.

There is an item for \$175 million to the Department of Finance to make grants to trust funds to the International Monetary Fund, the IMF, and the World Bank in support of their initiatives to assist over 500 million people living in the world's poorest, most heavily-indebted countries.

Another item is for \$160 million to the Department of Industry for a grant to Genome Canada, which grant was announced in the February 28, 2000 budget, and will support genomics research, which is the study of how genetic information is structured, stored, expressed and altered.

There will be \$125 million to the Department of Natural Resources and the Department of the Environment, as announced in the 2000 budget, for grants to the Federation of Canadian Municipalities, in the amount of \$100 million for the purpose of establishing a Green Municipal Investment Fund, and \$25 million for a Green Municipal Enabling Fund. These initiatives will allow the federation to support municipal infrastructure projects that improve air and water quality, minimize undesirable emissions and effluent, and encourage the sustainable use of renewable and non-renewable resources.

There is also \$102.8 million to the Department of Finance for transfer payments to the territorial governments. This increase reflects changes in the forecasts on which the payments are based, such as population, spending by provincial and local governments, and revenues generated by the territorial governments.

There is an item for \$99 million to the Treasury Board Secretariat to compensate departments and agencies for the impact of recent collective agreements and related adjustments.

This funding represents retroactive and ongoing incremental salary costs for fiscal year 1999-2000.

• (1600)

There is a sum of \$74.9 million to the Cape Breton Development Corporation to cover additional operating losses and workforce reduction costs associated with the earlier-than-planned closure of the Phalen mine; and \$74.3 million to the Department of Transport to enable Marine Atlantic Inc. to finance the purchase of a vessel for its ferry fleet. This vessel will provide Marine Atlantic with increased capacity and address service level issues.

There is also \$67 million to the Department of Public Works and Government Services for additional capital acquisitions to meet accommodation requirements; \$60 million to the Department of the Environment for a grant to the Canadian Meteorological and Oceanographic Society to establish the Canadian Fund for Climate and Atmospheric Science that will provide funding to researchers to strengthen Canada's scientific capacity to address climate change and air quality issues; and \$50 million to the Department of Veterans Affairs for payments to Merchant Navy veterans who served in World War I, World War II and the Korean War. These payments recognize the heroic contribution of Canada's Merchant Navy veterans to Canada's war efforts.

Honourable senators, I move now to the non-budgetary items, of which there is one. It is the \$50-million decrease to a working capital advance account of the Department of National Defence. This account had been temporarily increased to meet the department's pay requirements for personnel deployed outside Canada in the event of Y2K cash difficulties. This additional authority was not used and the account is now restored to its normal level.

These items represent \$2.5 billion of the \$3.1 billion for which parliamentary approval is sought. The remaining \$600 million is spread among a number of other departments and agencies, the specific details of which were included in Supplementary Estimates (B) 1999-2000.

I thank Senator Murray, the chairman of our committee, for his diligent work and firm management. I also thank all the honourable senators who are members of our committee for their efforts and ongoing cooperation. As well, I wish to thank the three Treasury Board officials, Mr. Coulter, Mr. Lieff and Mr. Lindsey, for appearing before the committee. I also wish to inform honourable senators that for Mr. Coulter the meeting of March 21, 2000, was his first encounter with our Senate committee in his new capacity as Assistant Secretary of the Planning, Performance and Reporting Sector. I take this opportunity to welcome him.

I urge honourable senators to pass Bill C-29, to grant supply to Her Majesty so that the Government of Canada may proceed with its extremely important business.

**Hon. Lowell Murray:** Honourable senators, with debate on this interim supply bill, we will complete the Senate's consideration of the federal government's spending for the fiscal year 1999-2000, a fiscal year which ends on Friday of this week.

The examination by the National Finance Committee and by the Senate of the spending programs of the government during the fiscal year now drawing to an end has been typically conscientious and thorough. I wish to acknowledge the work of my predecessor as chairman of this committee, Senator Stratton, who was in the Chair for most of the meetings and certainly for consideration of the Main Estimates.

Honourable senators, there are in this interim supply bill a few matters to which I should like to invite your attention. All of them are reflected in either the third or fourth reports of the committee, which we adopted earlier today.

First, I wish to thank Senator Cools for her detailed explanation of this bill. She mentioned the grants to be provided to the Canadian Federation of Municipalities to assist municipalities in various environmental projects. We tend to overlook the crucially important role of municipalities in environmental matters. They have responsibility for water and sewage systems, for garbage disposal, and for all manner of infrastructure. They have a regulatory role with regard to construction within their borders. Therefore, one can only applaud in principle the initiative of the federal government in trying to assist municipalities to improve their air and water quality, to minimize undesirable emissions and effluent, and to encourage the sustainable use of renewable and non-renewable resources.

My only concern here — and it is a concern of a parliamentary nature — is with the dubious practice, which did not begin with this government or even with its immediate predecessors, of passing the hat among various departments to finance what is essentially a single program. It appears that two departments, Natural Resources Canada and Environment Canada, are involved in these programs. With ministerial responsibility and accountability thus divided, it seems to me there is always considerable danger of ministerial responsibility and accountability falling through the cracks. This is a matter that our committee may want to take a closer look at on some future occasion. As I say, it is a practice resorted to more and more frequently in the government, to impose a tithe on various departments to come to the party to help finance what is essentially one program that should be under the authority and responsibility of one department.

The second matter I wish to raise concerns genomic research. I do so in order to express the hope that a couple of high profile institutions in one or two regions of the country will not take all of the money that is available and spend it. Members of the

committee, in particular members of the committee from Atlantic Canada, have expressed a determination that there be some reasonable regional balance and equity in a program like this. Our friend Senator Moore, who is from Nova Scotia, was quite firm in his view that some previous government programs in the field of support for innovation had short-changed his region. He is in a position to speak on this more authoritatively than I, but he made it clear that some of the universities in Atlantic Canada have come together with coordinated and collaborative approaches to genomic research. He has expressed the hope and expectation that this will be given very favourable consideration by the powers that be. If there is one area in which Atlantic Canada should have, and does have, a comparative advantage over the rest of the country, it is in its numerous institutions of higher learning.

I have two other matters, honourable senators, to which I wish to speak. These were reflected in the fourth report, which dealt with the Main Estimates for the fiscal year now drawing to a close. Members of the committee continue to express some concern about the increasing proportion of non-discretionary spending. As of now, almost 70 per cent of government expenditures are fixed statutory expenditures of one kind or another that, as the report says, do not appear to require an ongoing examination by parliamentarians. It certainly reinforces the view of those who call for sunset provisions in our legislation so that at least Parliament will periodically have an opportunity not only to monitor, as I hope we do now, but to evaluate the success or otherwise of some of these large spending programs.

• (1610)

Finally, the last time I spoke on one of these interim supply bills, I reported on the discussion in committee concerning Canada's liability for the costs of recovery and investigation of disasters such as the Swissair disaster off the coast of Nova Scotia. It appears that neither the airline nor other nations that might be involved or responsible for the airline are expected to defray any portion of the cost of recovery and investigation of accidents. These costs, as we have learned, are not trivial. Senator Ferretti Barth has raised this matter on several occasions. The committee is so organizing its affairs that, before we go home for the summer, I hope and expect we will have an opportunity to discuss with representatives of the Canadian Air Transport Safety Board, and perhaps people from the Departments of Justice and Foreign Affairs, just what the situation is in respect of our liability in these cases and what might be done to lessen our vulnerability. Our vulnerability as a country tends to be greater than others because of the large territory and the number of flights that overfly our land mass and our oceans.

With those few comments, honourable senators, I commend this bill to your support.



**Hon. Noël A. Kinsella (Deputy Leader of the Opposition):** Honourable senators, I was pleased to hear Senator Murray make reference in his remarks to the consideration that his committee gave to the question of the human genome and the concern that the authorities in question would see to it that monies will be expended in a variety of institutions across Canada. Obviously I am interested to see that some of it be expended in Atlantic Canada. However, more than the question of geography is the question of what kinds of studies are necessary and in what areas the Government of Canada should be ensuring that money will be spent in examining the astronomical number of questions that are associated with the human genome. Many legal, social and ethical issues surround this issue. I hope that the executive power, to use the terminology of colleagues, will be attentive to this short intervention so that we may see, as an important issue of values, that the ethical and human rights issues surrounding the human genome are addressed as well by Canadians.

A universal declaration on the human genome and human rights was drafted by UNESCO on November 11, 1997. That declaration, which describes the legal, social and ethical aspects of the human genome, is being addressed by scholars in fields other than biology and similar fields, but inclusive of scholars in the field of ethical issues.

I thank Senator Murray for raising that point in the chamber, and I simply wish to underscore the importance to Canada that we do put some resources into examining those social and ethical issues.

**Hon. Wilbert J. Keon:** Honourable senators, I should simply like to reinforce what both Senator Murray and Senator Kinsella have said. There is a real risk developing in the international front in this research in that it is now commercially driven. There is a huge investment on the part of private enterprise in this research. Indeed, the identification of the human genome, which in the normal course probably would have occurred in about 2005, has been stepped up to probably 2002 because of the commercial interests.

It is extremely important that Canada, which has been known for its social values and its sense of moderation, promote research in this field, and I strongly commend what is being done.

**The Hon. the Speaker *pro tempore*:** I must inform the Senate that if Senator Cools speaks now, her speech will have the effect of closing the debate.

**Senator Cools:** Honourable senators, I thank Senator Keon for his intervention on this particular supply bill. I especially welcome his intervention because sometimes the debates on these questions tend to get a little dry and numbers-oriented.

Sometimes it almost sounds as though it is a discourse for number crunchers. I belong to that group of people who has enormous respect for Dr. Keon's enormous medical experience and medical technology and medical knowledge. I thank Dr. Keon for his intervention and invite him to do it again and again.

Motion agreed to and bill read second time.

**The Hon. the Speaker *pro tempore*:** Honourable senators, when shall this bill be read the third time?

On motion of Senator Cools, bill placed on the Orders of the Day for third reading at the next sitting of the Senate.

## BUSINESS OF THE SENATE

**Hon. Dan Hays (Deputy Leader of the Government):** Honourable senators, I should like to call Order No. 6 now. I know that it intervenes Bill C-29 and Bill C-30, but if we could do that we will accommodate one of our colleagues in terms of his intentions to be elsewhere later this day.

## CANADA BUSINESS CORPORATIONS ACT CANADA COOPERATIVES ACT

### BILL TO AMEND—SECOND READING—DEBATE ADJOURNED

**Hon. Michael Kirby** moved second reading of Bill S-19, to amend the Canada Business Corporations Act and the Canada Cooperatives Act and to amend other Acts in consequence.

He said: Honourable senators, I rise to speak to you about important developments for corporate governance in the Canadian economy, developments that, I am proud to say, the Standing Senate Committee on Banking, Trade and Commerce has had a considerable influence over in the past several years.

The Canada Business Corporations Act, otherwise known as the CBCA, is the main federal law that sets out the rules of the game for good corporate governance for more than 155,000 federally incorporated businesses, including 249 of the 1999 *Financial Post*'s largest 500 corporations. These 249 CBCA companies alone account for approximately \$500 billion in annual revenues. The CBCA ensures that a proper accountability framework is in place by defining the rights and responsibilities of directors, officers and shareholders.

• (1620)

Governance is an important tool not only on a corporate level but also on a systemic economic level. On the corporate level, proper governance will ensure that a competent board is making well-informed, strategic decisions that balance risk with accountability in order to promote sustainability and profitability. On a systemic level, governance is an important contributing factor to a properly performing market and investment system which, in turn, has an important impact on the wealth creation process in the Canadian economy as a whole.



Good corporate governance is not just another buzz phrase. Indeed, as the Conference Board of Canada reported recently in an excellent study, companies that excel in governance practices post higher long-term profit, growth, and experience faster sales increases and are much more likely to be leading companies in their sector of business. That is also why organizations like the OECD, the World Bank and the Toronto Stock Exchange are active promoters of sound corporate governance practices.

Improving the governance practices of boards in Canada has been a mission of the Standing Senate Committee on Banking, Trade and Commerce for a number of years. One only need look at the committee's reports on corporate governance, the governance practices of institutional investors, joint and several liability and professional defendants, modified proportionate liability, the Canada Pension Plan Investment Board Act and the Public Sector Pension Investment Board Act, all of which have been published by the Standing Senate Committee on Banking, Trade and Commerce over the last three and one-half years, to recognize that governance is a concept that the committee feels very strongly about. The bill contains most of the committee's recommendations with respect to corporate governance, recommendations that have appeared over the past three and one-half years.

Honourable senators, it is clear that the CBCA is substantially in need of improvement because it has not been significantly amended since 1975. For 25 years, the corporate governance provisions in the CBCA have remained essentially the same. Surely, in the age of globalization, the CBCA rules must be modernized to provide Canadian businesses with clear, meaningful rules for pursuing today's marketplace opportunities.

Bill S-19, which is before us today, will improve and modernize the CBCA in four specific areas. First, it will expand the rights of shareholders to communicate with one another and encourage more participation in corporate decisions. Second, it will help eliminate barriers to global competitiveness so that Canadian firms can become global players, while attracting the world's best companies to establish a base in Canada for their international operations. Third, Bill S-19 will change corporate responsibilities by modernizing the liabilities of directors, officers and shareholders. This will promote fairness and reasonable risk-taking, which are necessary elements for growth and productivity in today's global economic environment. Finally, the bill will eliminate duplication of regulation and thereby reduce costs.

The proposed amendments, honourable senators, result from full consultations by both the Senate Banking Committee and Industry Canada over the past half dozen years, with several hundred stakeholders taking part in these consultations over this period of time.

A couple of years ago, Industry Canada released nine discussion papers following the initial set of consultations. These papers were then the subject of both Senate Banking Committee hearings and Industry Canada meetings from coast to coast. Clearly, the government has gone to great lengths to identify the most appropriate set of changes to the existing CBCA. Advice and comment on these proposed changes have come from a large number of shareholders, members of the legal community, large and small businesses, professional directors and other interested stakeholders.

Honourable senators, as chairman of the Standing Senate Committee on Banking, Trade and Commerce for many of the hearings the committee held, I am confident that the corporate governance provisions in this bill faithfully reflect this extensive study and consultation and, as a result, are sound corporate policy and sound public policy.

Honourable senators, I should like to turn briefly to each of the four main subject areas covered by the amendments introduced in this bill.

The first area I wish to discuss consists of a group of proposals that will strengthen the rights of shareholders and make it easier for them to communicate, both with each other and with the corporation in which they are shareholders. If shareholders are to exercise their rights to approve fundamental changes to a company, it is essential that they have access to corporate information in a timely manner, that they be able to make informed decisions on what that information means, and that they be able to vote in person or by proxy.

The current rules for the solicitation of a proxy — that is, the solicitation to act on another shareholder's behalf at a meeting of shareholders — substantially and significantly hinder shareholder communications with each other by requiring that a proxy circular be sent at the personal expense of the shareholder, not at the expense of the company, to all shareholders. As a result, the existing rules do not allow for adequate exchange of information and communication among shareholders, since such communication is severely limited and is very costly to shareholders.

The amendments proposed in Bill S-19 would improve shareholder communications and, as a result, improve corporate decision making by implementing the following changes. They would allow shareholders to discuss management proposals among themselves before or after casting a ballot or assigning a proxy. The changes proposed in Bill S-19 would give shareholders the right to make proposals to other shareholders through the use of the management circular. The proposed amendments would liberalize the existing system to allow beneficial or non-registered shareholders to submit proposals so that smaller shareholders could participate in the important decision-making process. The changes would also allow corporations to use new and emerging techniques such as e-mail, for example, to communicate more effectively with shareholders.

The second major area of change contained in Bill S-19 deals with enhancing global competitiveness. What these proposed changes do is help Canadian corporations in two quite different ways. First, they will make it easier for corporations to establish a board with the mix of skills and backgrounds that will best shape and realize their goals. Second, they will clarify directors' liability rules to ensure that these rules do not hinder sensible and necessary corporate risk taking.

The CBCA currently requires that a majority of the members of the boards of directors of CBCA corporations be Canadian residents. However, in the age of globalization, this requirement may counteract the efforts of Canadian firms that wish to strengthen their position in the global marketplace. High residency requirements, like the current 50 per cent, limit a corporation's ability to recruit a board with the most appropriate mix of qualifications to advance a corporation's goals. Stronger international representation on boards may also provide a corporation with critical leverage to pursue new markets and investment opportunities. In addition, lowering residency requirements for board directors could help to establish a climate that encourages foreign investors to incorporate and establish a base for global operations in Canada.

Honourable senators, Bill S-19 proposes to reduce the residency requirement for the board of directors from its current requirement of a majority of Canadian residents to a requirement of 25 per cent Canadian residents. As recommended by the Banking Committee, it also proposes to eliminate the residency requirement for committees of the boards. No longer will it be necessary for a majority of the members of a board committee to be Canadian residents.

Although the Banking Committee did not recommend changing the residency requirements for directors three and one-half years ago, I believe that when that issue comes before the committee again, the trends in the global marketplace since the release of that Banking Committee report will convince the committee that the 25 per cent threshold is indeed a reasonable and balanced choice to ensure the competitiveness of Canadian companies in the age of globalization, while preserving the representation of Canada's national interests in board deliberations.

Some may ask, indeed, why this bill does not propose simply repealing the residency requirement altogether and following the example of seven jurisdictions in Canada — four provinces and three territories — which have eliminated the residency requirement for provincial or territorial incorporated companies. Quite simply, my conviction is that an entity incorporated under the Canada Business Corporations Act should draw its strength from its Canadian national base. The contribution of Canadian residents on boards can be instrumental in expanding this base for the benefit of our domestic economy, as well as for the benefit of the corporation concerned.

Although, as a general rule, the amendments will reduce the residency requirements for boards of CBCA companies to 25 per cent, for those economic sectors in which other federal legislation and policies impose ownership restrictions, such as the transportation and telecommunications sectors, the CBCA will continue to require that the higher board residency requirements now existing in current legislation be maintained for those companies.

• (1630)

The second way to enhance the global competitiveness of Canadian corporations is to ensure that the liability rules for directors are clear and meaningful. Currently, directors can be held personally liable for large legal and other costs, even if they are acting properly and in the best interests of a corporation.

The Banking Committee found that the uncertain potential of burdensome potential liability can — and, there are many examples in Canada where these conditions have occurred — create essentially what has been called, in the literature, a “liability chill”, where a director will limit his or her creativity and risk taking and, in some cases, even be reluctant to stay on the board of a Canadian corporation because of fear of personal bankruptcy. As a result, this can impede the entrepreneurial strength and the competitiveness of Canadian corporations and can lead, for example, as was the case with PWA some years ago, to a situation where the board resigned en masse in order to avoid the personal liability that would have resulted had they stayed to help try to steer the company through its difficult times.

To avoid this problem, the bill proposes to bolster the existing “good faith reliance” defence by replacing it with a “due diligence” defence. The good faith defence allowed directors to point to a reliable source of information as justification for their actions, but it did not permit them, in the absence of that specific justification, to show that they acted reasonably under the circumstances. The “due diligence” defence would provide that a director would not be liable if he or she exercised the degree of care, diligence and skill that a reasonably prudent person would have exercised in comparable circumstances.

This shift from the “good faith reliance” defence to the “due diligence” defence will ensure that directors are not unduly exposed to personal liability and will allow them to make strategic decisions that incorporate reasonable and necessary risk taking while leaving directors liable if they do not carry out their decisions and their advice at a board in a responsible way.

The third area addressed in this bill, honourable senators, is a series of amendments that clarify corporate accountability and that set out the responsibilities of directors and officers in particular circumstances. These amendments are the direct result of the Senate Banking Committee's extensive hearings and reports on the liability of directors, officers and auditors in the preparation of financial information which is required under the Canada Business Corporations Act.



Currently, directors, officers and auditors face what legally is called "joint and several liability" for claims arising from financial losses due to any error, omission or misstatement in financial information issued by the company. This means that each and every one of the defendants in a lawsuit is potentially liable for 100 per cent of the damages of a plaintiff, regardless of whether they are 10 per cent or 90 per cent at fault for the plaintiff's loss. For example, if you sued two defendants, one of whom was 90 per cent liable but had no money and the other who was 10 per cent liable but had lots of money, the second defendant would still be liable for the full 100 per cent of the damages.

The Banking Committee studied this issue of joint and several liability in detail over some considerable period of time and recommended landmark changes in both its March 1998 and September 1998 reports. Bill S-19, honourable senators, reflects precisely the recommendations contained in the Banking Committee reports.

Parenthetically, I should like, in particular, to thank Senators Meighen and Kelleher, who, last summer, when we were trying to have the final details on this proposal accepted not only by the government but also by the Canadian Bar Association and the Canadian Institute of Chartered Accountants, were helpful in attending a series of meetings with me at which we developed a solution that everyone has accepted as a reasonable compromise under the circumstances.

The committee, in the course of its work on joint and several liability, found that the current rules tend to penalize the most accessible and creditworthy defendants, regardless of their degree of fault. Plaintiffs can be, and in many cases are, motivated under current rules to sue the "deepest pockets" such as professional advisors or directors of corporations themselves who are insured and solvent, regardless of their degree of fault. This can and has discouraged the provision of professional services and the availability of sound, reliable financial information to CBCA corporations and to federally incorporated cooperatives.

The amendments before you today represent a cutting edge shift in the way that liability is to be apportioned in the future. Canada, under the proposals in this bill which were developed directly by the Banking Committee, would become a world leader in proposing changes which, as a general rule, state that liability should be proportional to the degree of fault.

In spite of this basic principle, which seems fair in and of itself, the committee also felt — and this bill reflects this — that it is necessary to protect those in society who are most severely affected by the negligence of experts and for whose protection the joint and several liability regime was initially formulated. For this reason, under the proposal in this bill and as recommended by the committee, joint and several liability will continue to be the remedy where a plaintiff does not have significant assets or where a court is of the opinion that joint and several liability continues to be just and equitable under the circumstances. The threshold that will determine whether a plaintiff will be under the

modified proportionate liability scheme or the joint and several liability system will be fixed by regulation.

Finally, honourable senators, the proposed amendments in this bill would decrease the overlap between the CBCA and existing provincial regulations. In the past, corporations have had to ensure that they complied with two duplicate sets of regulations that had the same public policy goal. The amendments proposed will decrease this duplication and, as a result, will decrease the cost for Canadian businesses. In particular, the bill provides that requirements on reports of trades by insiders will be repealed because they simply duplicate the current provisions in provincial securities acts. The bill requires that people who have been harmed by insider trading will have wider scope for seeking civil remedies, and it provides that the takeover bid provisions will be repealed, since provincial securities acts adequately cover this area. The same is true for so-called "going-private" transactions. They will be permitted subject to compliance with the fairness criteria established by provincial securities regulations.

Honourable senators, for the most part, the amendments proposed in the CBCA in those areas are mirrored also by provisions again in this bill in the Canada Cooperatives Act. This is to say, this bill amends the Canada Cooperatives Act to make the kinds of changes which I just discussed in the new CBCA.

Honourable senators, the highlights of the bill that I have just sketched will help ensure that CBCA corporations and federally incorporated cooperatives operate under the certainty of rules that allow them to compete more effectively in the international marketplace. In light of the extraordinary amount of work that the Standing Senate Committee on Banking, Trade and Commerce has put into all the issues discussed in this bill, and in light of the fact that the vast majority of recommendations contained in this bill are amendments that stem from recommendations made by the committee over the last three and one half years, I hope that this chamber will quickly refer the bill to the Banking Committee whose members will give it a final and detailed analysis on the basis of their expert knowledge of these issues. Honourable senators, I would urge you to refer this bill to the Standing Senate Committee on Banking, Trade and Commerce fairly quickly.

On motion of Senator Kinsella, debate adjourned.

## VISITORS IN THE GALLERY

**The Hon. the Speaker *pro tempore*:** Before I recognize another senator, I would call your attention to another group of visitors in our gallery. We have with us today a group from Strathcona Tweedsmuir High School of Okotoks, Alberta. The office of Senator Ferretti Barth helped this group organize a visit to the Parliament of Canada. On behalf of all honourable senators, I welcome to you the Senate of Canada and I wish you an enjoyable stay in Ottawa.



• (1640)

## APPROPRIATION BILL NO. 1, 2000-01

### SECOND READING

**Hon. Anne C. Cools** moved the second reading of Bill C-30, for granting to Her Majesty certain sums of money for the public service of Canada for the financial year ending March 31, 2001.

She said: Honourable senators, when given Royal Assent, Bill C-30 will be known as Appropriation Act No. 1, 2000-2001. I do not know why we do not say "twenty-o-one." This bill is also called the interim supply bill and grants supply in the amount of \$15.6 billion for the first quarter of the new fiscal year 2000-2001 being April, May and June 2000.

Honourable senators, the Main Estimates 2000-2001 were introduced in the Senate by Senator Dan Hays on March 1, 2000, and were referred to the Standing Senate Committee on National Finance on March 2, 2000. Our National Finance Committee subsequently met on March 22, 2000, and the following officials of Treasury Board appeared: Keith Coulter, Kevin Lindsey and Andrew Lieff.

On March 23, the committee's chairman, Senator Lowell Murray, presented the committee's fifth report, its interim report on these Main Estimates 2000-2001. That report was adopted a few moments ago. The Main Estimates 2000-2001 describe the government's proposed spending for the fiscal year which commences in a few days on April 1.

Honourable senators, Bill C-30 will provide interim supply for certain expenditures that require Parliament's authority now in order for the business of the government to go forward. Bill C-30 is seeking Parliament's authority for the interim supply of \$15.6 billion dollars.

The Main Estimates 2000-2001 total \$156.2 billion, an increase of \$4.6 billion, or 3 per cent over the 1999-2000 Main Estimates. These estimates reflect the bulk of the expenditure plan set out in the Minister of Finance's February 28, 2000 budget. The remainder includes provisions for additional spending under various statutory programs or for authorities that will be sought through Supplementary Estimates. The budget also provided for the revaluation of the government's assets and liabilities and makes allowance for the anticipated lapse of spending authority.

Her Majesty's government submits these Estimates to Parliament in support of its request for authority to spend public

funds. They include information on both budgetary and non-budgetary spending authorities. Parliament will subsequently be asked to consider subsequent appropriation bills to authorize additional spending.

The budgetary expenditures include the cost of servicing the public debt; operating and capital expenditures; transfer payments to other levels of government, organizations or individuals; and payments to Crown corporations. The non-budgetary expenditures, being loans, investments and advances, represent changes in the composition of the financial assets of the Government of Canada.

Honourable senators, these Main Estimates support the government's request for Parliament's authority to spend \$50.1 billion under program authorities for which annual approval is required. The remaining, some \$106 billion, or 67.9 per cent of the total, is statutory and those forecasts are provided for information purposes only. The bill before you today, otherwise known as the Interim Supply Bill, is seeking \$15.6 billion of spending authority to provide for government expenditures up to the end of the first supply period of the fiscal year 2000-2001, which is the first three months.

As honourable senators know, the purpose of interim supply is to provide the government with funds to operate until Parliament can complete its detailed review of the Estimates and deal with the full supply bill.

The process of determining interim supply is as follows. The amount of funds for interim supply is routinely determined at three-twelfths of the amount of a given vote in the Main Estimates. The funding is intended to cover the first three months of the fiscal year — that is, April to June — when the first regular supply period ends. Departments and agencies may request more than three-twelfths but must justify those requirements in one-twelfth increments to a maximum of eleven-twelfths. As a consequence, total funding can never be obtained through interim supply and the rights and privileges of members of Parliament — senators in our case — to question or debate any item in the Main Estimates are in no way compromised.

Honourable senators, typically, justification for additional twelfths relates to the season, for example construction season, or legal and quasi-legal obligations as, for example, the governments pays grants in lieu of paying property taxes and interim payments that are typically due in the spring, payment schedules under contract or transfer payment agreements such as the Department of Indian Affairs and Northern Development, where the payments are often made early in the fiscal year under financing agreements with the bands, and for department vote netting their revenues to provide bridge funding as revenues are received after costs have been incurred.

Honourable senators, now I should like to briefly address the contents of this interim supply bill. The total amount of authority sought is \$15.6 billion, or 31 per cent of the total amount being appropriated through Main Estimates. There are four votes for which eight-twelfths are being sought. These are: \$552.6 million to the Department of National Defence for the payment of outstanding claims for Disaster Financial Assistance Arrangements that may come due for settlement early in the new fiscal year; \$504.2 million to the Treasury Board Secretariat's Vote 5, entitled "Government Contingencies," to provide for unforeseen expenditures that may arise during the interim supply period; \$9.8 million to the Canadian Commercial Corporation to supplement working capital advances; and \$7.2 million to the Department of Natural Resources for full payment by April 1, 2000, on a loan agreement with Nordion International Inc.

Honourable senators, the following are typical of other items for which additional twelfths are being sought. They are: \$1.7 billion to the Department of Indian Affairs and Northern Development's Vote 15, representing two-twelfths as a result of funding arrangements with the bands that provide for a large portion of the funding on April 1 each year. For example, the agreements with the James Bay Cree, the Oujé Bougoumou Cree and the Naskapi bands of Quebec all require full payment in early April. As well, there are \$862.8 million to the Department of Finance's Vote 15, representing four-twelfths in accordance with the financing arrangements entered into with the territorial governments.

Also included are \$424.6 million to the Department of Agriculture and Agri-Food Canada's Vote 10, representing one-twelfth to cover anticipated disbursements for farm income assistance programs prior to June 2000; \$261.1 million to the Canadian Broadcasting Corporation's Vote 20, representing one-twelfth to cover contract payments and pre-payments; and \$88 million to the Department of Fisheries and Oceans' Vote 10, representing three-twelfths to cover contribution agreements under the Aboriginal Fisheries Strategy and the Fisheries Access Program.

Honourable senators, the Standing Senate Committee on National Finance will continue to examine and study these Main Estimates for some time. The custom is until March 31 of the next year. In the meantime, I encourage all senators to pass Bill C-30, Appropriation Act No. 1, 2000-2001, the interim supply bill, so that the government may get the dollars required to do Her Majesty's business in Canada.

I take this opportunity once again to thank Senator Murray for his diligence and his experience in handling this particular committee. I have already thanked the Treasury Board officials, but I would today thank the staff of the committee, being the committee clerk, Luc Bégin, and the committee researcher, Guy Beaumier. They have worked quite hard and have been assiduous in producing our reports, organizing our committee meetings and bringing together the reports and the two bills to get them moving through the Senate chamber.

Honourable senators, I know that many individuals find the subject matter of the National Finance Committee a bit tedious. Yes, there is a lot of tedium to it, but at this particular time of year, as Senator Murray will know, many things must come together so the government can get its supply by March 31. I am sure that Senator Kinsella has a few questions to put to me about this very important business of supply, but at this particular time of year, we are in a special crunch to do a fair amount of work to meet some very tight deadlines. This year, I just thought I should thank the staff because the staff have been especially cooperative. They sped up their work essentially to fit the senators' timetable and the government's timetable.

Having said all of that, honourable senators, I encourage all of you to vote for this bill and to give the government oodles and oodles of money — buckets full.

• (1650)

**Hon. Lowell Murray:** Honourable senators, I thank Senator Cools for her detailed explanation of this bill. I join with her in the well-deserved praise that she has expressed for the committee staff and the Treasury Board officials who appeared before the committee.

The Treasury Board officials are excellent witnesses. Further, they are prompt and thorough in providing written replies to questions that may be outstanding at the close of any meeting. As well, colleagues on both sides of the table are conscientious and very well informed in their discussion of the Estimates. They act in the best parliamentary tradition with regard to examining the spending programs and policies of the government.

With this debate, we in the Senate and the members of the Standing Senate Committee on National Finance commence our consideration of the government spending programs for the fiscal year 200-2001, which begins on April 1. The background to this interim supply bill is contained in the fifth report of the committee which I tabled here last week. The report is factual. Over the next 12 months, we will be focus, in some detail, on various aspects of government spending and policy. In this report, we have identified certain areas on which we intend to concentrate. The committee has a meeting scheduled for April 4 to consider future business of the committee. We will continue to monitor the spending plans and programs of the government over the fiscal year.

Our activity, however, in no way discourages or prevents other standing committees from examining the Estimates of a particular department or departments in order to discuss in greater depth the policies and activities of the government in those departments.

One matter to which I wish to refer may more properly belong in the budget debate which is also currently taking place in the Senate, but I will impose upon honourable senators by flagging it in this discussion.



It leaps off the page of our fifth report in which we reprint the expenditure plan and Main Estimates for the year 2000-2001. I am referring to the item at the very top of the list, that is, public debt charges of \$42 billion for the fiscal year which begins on April 1. The amount of \$42 billion to service the debt is, as colleagues know, far and away the biggest spending item in our Estimates. I took the trouble to examine the history of this figure, and I discovered what I had suspected — that is, that this \$42 billion to service the debt in the fiscal year beginning April 1 has not changed much in recent years. The amount was \$38 billion in 1993-94; \$42 billion in 1994-95; \$46.9 billion in 1995-96; \$45 billion in 1996-97; \$40.9 billion in 1997-98; \$41.4 billion in 1998-99; and \$41.5 billion in 1999-2000, the fiscal year that comes to an end on Friday. As I have said, next year the amount will be \$42 billion, and it is forecast to be \$41.5 billion in the fiscal year 2001-2002.

That is a great deal of money for debt servicing. It amounts to more than 25 cents out of every dollar the government spends, and it has been that way for a good long time, going back at least to 1988-89. At various times, it has been 27.2 per cent and 28.1 per cent.

For 1993-94, 24 cents out of every spending dollar went to service the debt; in 1994-95, 26.2 cents; in 1995-96, 29.5 cents; in 1996-97, 30 cents; in 1997-98, 27.3 cents; in 1998-99, 27.1 cents; in 1999-2000, the fiscal year ending this week, 26.4 cents; in 2000-2001, 26.6 cents; and in 2001-2002 it is forecast to be at 25.5 cents. Therefore, whether you consider it in terms of raw numbers, in the vicinity of \$42 billion out of spending of \$157 billion, or whether you consider it as a proportion of each dollar spent, it is a considerable number.

My point is that it seems to me to argue for far more emphasis in the government's fiscal policy on paying down the national debt. I recognize that, since we have turned the corner on deficit financing in recent years, the Minister of Finance has applied some or all of his \$3-billion contingency fund to paying down the debt. However, that is really a drop in the bucket when you look at the overall debt and the cost of servicing it.

It seems to me that, especially when the economy is reasonably buoyant, as it is and has been for a little while, we should go the extra mile to try to bring down the national debt. In doing so, we ultimately provide more flexibility for the government to use fiscal measures to combat the inevitable downturns that will come in the economy. Further, by paying down the debt at a relatively more accelerated pace, we lessen the vulnerability of our annual budget to the inevitable increases in interest rates.

These are policy matters that are not normally in the purview of the Standing Senate Committee on National Finance. I should have raised them in the course the budget debate, but I thought you would not mind if I flagged them at this early stage in the fiscal year.

Honourable senators, as I have said, the committee will focus on specific items in the Main Estimates and in interim supply

measures as they come to us over the next 12 months. Meanwhile, I commend this bill to your consideration and support.

**Hon. Noël A. Kinsella (Deputy Leader of the Opposition):** Honourable senators, in rising to speak to this bill I should like to draw the reflection of all honourable senators to exactly what we are doing and by which authority we are doing it.

• (1700)

In the *Debates of the Senate* of March 23, 2000, at page 813, we read in a speech delivered in this house by the Leader of the Government in the Senate the following words:

...our system of responsible government gives the House of Commons leverage that we in the Senate do not have.

Honourable senators, I invite your reflection on the important lever that we are dealing with at this time, that is, the lever of the purse. It is the lever of whether or not the executive will be voted supply. This is no small lever in the hands of members of this chamber in our bicameral Parliament.

I wish to share with honourable senators the words of J.E. Hodgetts, a renowned political scientist, who stated:

Parliament is the legislature's capacity to act as the great debating, if not educational forum for the nation. This capacity, joined with the historic right to have grievances settled by the Crown before approving money in support of the Crown's activities vests in the legislature not only the formal responsibility for approving statutes but also a continuing critical overseeing of executive actions.

Honourable senators, the Standing Senate Committee on National Finance has seriously and expeditiously analyzed the matter of supply over the years and this chamber has focused on it and generally voted supply. If we check the record, we may find that there have been times in the past that supply was held up, although, in my quick review, I did not find cases where supply was rejected.

The point is that we have very important leverage. To argue, in some curious theory of responsible government, that somehow the checks and balances that this institution must exercise diminish our system of parliamentary democracy is, I think, an argument that goes in the wrong direction.

It is noteworthy that we are voting on a supply bill, perhaps the most important lever in the hands of the Senate in accomplishing our mandate on behalf of the people of Canada to hold the executive accountable.

**Senator Cools:** Honourable senators —

**The Hon. the Speaker pro tempore:** Honourable senators, I wish to inform the Senate that if Senator Cools speaks now her speech will have the effect of closing the debate on second reading of this bill.



**Senator Cools:** Honourable senators, I would thank Senator Kinsella for his intervention. At first I thought he was asking a question of me, but I believe he ended up making a statement. Perhaps he is still planning to ask a question.

**Senator Kinsella:** No, I am not.

**Senator Cools:** I should like to make a few comments in response to what Senator Kinsella said with regard to Senator Boudreau's comments last Thursday in the debate on Bill C-20.

That which Senator Kinsella said is quite well known by all of us — that is, that the Senate is an extremely important institution. As Senator Kinsella may recall, I rose last week in the chamber to say that I believed Senator Boudreau was wrong. I held that position then, and I continue to hold it now. Perhaps some of the issues that Senator Kinsella is raising should also be debated within the context of Bill C-20 rather than in the debate on second reading of this supply bill.

Honourable senators, a word being used in universities these days is “deconstruction”, which means that our ideas, customs, beliefs and values are being taken apart one by one. There is no doubt that the Senate of Canada was constructed for many purposes. The first purpose was to express the federal principle. The House of Commons is constituted and constructed as a unitary house. When the Fathers of Confederation were assembling the Senate of Canada, they intended that it would be the Senate of Canada which would embody the federal principle. Therefore, the federal principle is in the Senate, not in the House of Commons. This fact is no longer widely known or widely understood and is rapidly fading into deconstruction.

Second, the great Father of Confederation, Sir John A. Macdonald, as we know, personally hand wrote many of the motions and many of the first sets of bills. The man was such a great mind and such an architect it cannot be controverted. When the Senate was assembled at the time as per the BNA Act, we must be mindful that much attention was paid to the actual scripting and drafting of the BNA Act because the Fathers of Confederation intended the Senate to outlive its critics. It is important to remember that when Lord Carnarvon defended the BNA Act during the debates in England, Lord Thring, who was an especially efficient and extremely capable draftsman, paid extreme attention to every detail of the drafting. The BNA Act did not state that there shall be a Parliament, it stated that there shall be one Parliament of Canada.

I also want to make the point that we hear again and again that only the House of Commons is the house of confidence. We hear repeatedly that the Senate has no power in respect of money bills. That is rubbish and nonsense. To begin with, the term “money bill” is not particularly helpful in the constitutional

parliamentary life of Canada. As a matter of fact, it is a menace. The fact of the matter is that when the Senate was put together, a few concepts of governance were rejected. The first concept of governance that was rejected by the Fathers of Confederation was that the Senate be elected. The option was there at the time to have the Senate elected. Many of the legislative councils that yielded to the Senate were elected. They rejected that.

An additional factor, which is more obscure and not well known, is that the Fathers of Confederation intended the Senate to have larger and greater powers over finances than even the House of Lords. They intended, for example, that the federal principle be embodied in the Senate so that monies raised by taxpayers in one area could not be spent by taxpayers in another area.

In the lead-up to Confederation in 1864, George Brown and the Ontario participants were especially diligent about these particular matters. Thus, the Senate was acceptable to them, because the Senate was intended to have very large powers over the business of the financial affairs of the government or the executive, as we would choose to describe that.

• (1710)

As I said before, all of this is off the cuff. The only limit on the Senate's financial powers is that tax measures on appropriations must originate in the House of Commons, by a minister of the Crown, obviously, but, other than that, there is absolutely no limitation on the powers of the Senate in respect of finances.

I have seen senators who are intimidated by being told that they cannot amend a bill because it has a Royal Recommendation; and that they cannot amend a financial bill. It is all a lot of poppycock and rubbish. We are in an era of deconstruction, an era which some scholars have referred to as “the passing of Parliament.” It saddens me significantly. I am coming to the conclusion that Parliament, as an institution that I was taught as a youngster to love and to uphold, is passing away from us.

I do not have the quotation in front of me, but there was a famous Liberal named Clifford Sifton, in Sir Wilfrid Laurier's government who often said that the executive and the cabinet would grow at the expense of the House of Commons, and that it was up to the Senate to be the strong check and balance on the House of Commons.

In any event, I have heard the concerns expressed by Senator Kinsella. The Senate's powers in respect of this particular bill are huge. I am also aware that Senator Kinsella is saying that the opposition is being very magnanimous and is cooperating with the government to pass its supply bills. However, he is also reminding the government that there are ways to do business other than the cooperative way. I am mindful of those thoughts and I am sensitive to them. That is why, when I run one of these committee meetings, I ensure that the members of the opposition have as much say as they want and ask questions, even at my expense.

I would encourage Senator Kinsella to pursue this particular debate during the debate on Bill C-20. I have heard his concerns and, hopefully, the government will also hear them. I would point out to Senator Kinsella that I, too, have made it my business to keenly, diligently and, I would add, quite exhaustively, study the history of this place and I also sincerely believe that the Fathers of Confederation were absolutely accurate in stating that they were configuring a senate which would be difficult to change because constitutions are supposed to be resistant to change; but that they were configuring a senate which would last as long as Canada.

I think the maxim that the duration of Canada as a country is related to the existence of the Senate as a senate is most interesting and exciting.

Having said that I have no doubt that I have brought Senator Kinsella small comfort in respect of his concerns about Bill C-20. However, with regard to this particular bill, his point has been well made and well taken.

Motion agreed to and bill read second time.

**The Hon. the Speaker pro tempore:** Honourable senators, when shall this bill be read the third time?

On motion of Senator Cools, bill placed on the Orders of the Day for third reading at the next sitting of the Senate.

## FINANCING OF POST-SECONDARY EDUCATION

### INQUIRY—ORDER STANDS

On the Order:

Resuming debate on the inquiry of the Honourable Senator Atkins calling the attention of the Senate to the financing of post-secondary education in Canada and particularly that portion of the financing that is borne by students, with a view to developing policies that will address and alleviate the debt load which post-secondary students are being burdened with in Canada.—(*Honourable Senator Hays*).

**Hon. Dan Hays (Deputy Leader of the Government):** Honourable senators, I ask leave that this matter be stood in the name of Senator Callbeck who intends to speak soon on this inquiry.

**The Hon. the Speaker pro tempore:** Is it agreed, honourable senators?

**Hon. Senators:** Agreed.

Order stands.

## FUTURE OF CANADIAN DEFENCE POLICY

### INQUIRY—ORDER STANDS

On the Order:

Resuming debate on the inquiry of the Honourable Senator Forrestall calling the attention of the Senate to the future of Canadian Defence Policy.—(*Honourable Senator Hays*).

**Hon. Dan Hays (Deputy Leader of the Government):** Honourable senators, I would ask to have this matter stand in the name of Senator Rompkey who intends to speak to it shortly.

**The Hon. the Speaker pro tempore:** Is it agreed, honourable senators?

**Hon. Senators:** Agreed.

Order stands.

## REVIEW OF ANTI-DRUG POLICY

### MOTION TO FORM SPECIAL SENATE COMMITTEE— ORDER STANDS

On the Order:

Resuming debate on the motion of the Honourable Senator Nolin, seconded by the Honourable Senator Cohen:

That a Special Committee of the Senate be appointed to reassess Canada's anti-drug legislation and policies, to carry out a broad consultation of the Canadian public to determine the specific needs of various regions of the country, where social problems associated with the trafficking and use of illegal drugs are more in evidence, to develop proposals to disseminate information about Canada's anti-drug policy and, finally, to make recommendations for an anti-drug strategy developed by and for Canadians under which all levels of government to work closely together to reduce the harm associated with the use of illegal drugs;

That, without being limited in its mandate by the following, the Committee be authorized to:

- review the federal government's policy on illegal drugs in Canada, its effectiveness, and the extent to which it is fairly enforced;
- develop a national harm reduction policy in order to lessen the negative impact of illegal drugs in Canada, and make recommendations regarding the enforcement of this policy, specifically the possibility of focusing on use and abuse of drugs as a social and health problem;



- study harm reduction models adopted by other countries and determine if there is a need to implement them wholly or partially in Canada;
- examine Canada's international role and obligations under United Nations conventions on narcotics and the Universal Declaration of Human Rights and other related treaties in order to determine whether these treaties authorize it to take action other than laying criminal charges and imposing sentences at the international level;
- explore the effects of cannabis on health and examine whether alternative policy on cannabis would lead to increased harm in the short and long term.
- examine the possibility of the government using its regulatory power under the *Contraventions Act* as an additional means of implementing a harm reduction policy, as is done in other jurisdictions;
- examine any other issue respecting Canada's anti-drug policy that the Committee considers appropriate to the completion of its mandate.

That the Special Committee be composed of five Senators and that three members constitute a quorum;

That the Committee have the power to send for persons, papers and records, to examine witnesses, to report from time to time and to print such papers, briefs and evidence from day to day as may be ordered by the Committee;

That the briefs received and testimony heard during consideration of Bill C-8, *An Act respecting the control of certain drugs, their precursors and other substances*, by the Standing Senate Committee on Legal and Constitutional Affairs during the Second Session of the Thirty-fifth Parliament be referred to the Committee;

That the Committee have the power to authorize television, radio and electronic broadcasting, as it deems appropriate, of any or all of its proceedings;

That the Committee be granted leave to sit when the Senate has been adjourned pursuant to subsection 95 (2) of the Senate Rules; and

That the Committee submit its final report not later than three years from the date of its being constituted.—(*Honourable Senator Hays*).

**Hon. Dan Hays (Deputy Leader of the Government):** Honourable senators, this motion stands in my name. I would ask honourable senators to agree to have the time frame within which this motion shall be spoken to extended for another 15 days.

**The Hon. the Speaker pro tempore:** Is it agreed, honourable senators?

**Hon. Senators:** Agreed.

Order stands.

## ASIA-PACIFIC PARLIAMENTARY FORUM

EIGHTH ANNUAL MEETING—INQUIRY—DEBATE ADJOURNED

**Hon. Sharon Carstairs** rose pursuant to notice of March 23, 2000:

That she will call the attention of the Senate to the Eighth Annual Meeting of the Asia-Pacific Parliamentary Forum, held in Canberra, Australia, from January 9 to 14, 2000.

She said: Honourable senators, it was a privilege to be part of this chamber's delegation in Canberra, Australia, from January 9 to 13, 2000, at the Asia-Pacific Parliamentary Forum.

Accompanying me from this chamber were Senator Hays, who was the co-chair of the overall delegation, and Senator Oliver, who represented the entire delegation on the drafting committee, preparing the final communiqué, a job he did with his usual high level of expertise. Although I have travelled before on behalf of the Senate, this was the first time I represented the Senate in this particular manner as part of a delegation.

● (1720)

The delegation, composed of members from all parties in the House of Commons, worked extremely hard to put forward our country's agenda. Mr. Jim Hart, a member of Parliament from British Columbia, introduced a motion on East Timor and peacekeeping efforts there. After some negotiations with other nations to make this motion acceptable to all delegations, it was passed. It expressed the appreciation of all delegates for the work of peacekeepers throughout the world.

I was privileged to introduce Canada's second motion on war-affected children. I was deeply touched that this resolution received quick and unanimous approval.

The Canadian delegation also worked to achieve consensus on a number of other resolutions, particularly one on the need for drug education programs in our schools.

Honourable senators, I noted with particular interest the frequency that the Chinese delegation turned to the Canadian delegation for help in resolving difficulties. This is a sign of very positive relations between our two countries, and it encouraged me to continue to support our rule-of-law project in China. This is not a concept that is part of their tradition and not one to which they easily relate. However, it is a concept that I hope they will be able to fully embrace as the years pass.



Honourable senators, the host country, Australia, was generous and warm in the hospitality shown to all of us — even though they were unable to show us a kangaroo in the wild, which caused some of us deep regret. However, visits to the National Art Gallery, a national historic site where the arts and crafts of Australia were wonderfully exhibited, and a boat trip from the Olympic Games site and to the Sidney opera remain highlights.

I also took the opportunity to have a thorough tour of the Parliament buildings in Canberra. All of us visited the chambers, the main hall and many of the 27 patios. They are fascinating buildings. In fact, there are seven buildings, and the courtyards are all over the place. However, as a member of the Parliamentary Buildings Advisory Council, I took the opportunity to visit members in their offices and see the air conditioning and heating systems and — honourable senators, eat your heart out — the underground parking system for all members and all staff of the Parliament buildings.

**Hon. Senators:** Hear, hear!

**Senator Carstairs:** It gave me an understanding of their buildings that I am finding very useful in my deliberations on your behalf as a member of the advisory council.

Honourable senators, I learned a great deal on this trip. I had an opportunity to get to know the senators and the members of Parliament who were part of this trip, and, yes, I had some fun, particularly as my husband, John, was able to join me on this trip. He and I had already planned a trip to Australia and New Zealand for the month of January and had already booked and, I quickly add, paid for our trip before I was assigned to this delegation. However, being part of this delegation made our visit just that much more memorable and enjoyable.

In closing, I wish to thank the clerk, Normand Radford, who went out of his way to take care of our delegation. It is a further example of how well served we all are by the staff of Parliament here in Canada.

On motion of Senator Hays, debate adjourned.

## REVIEW OF NON-PROLIFERATION TREATY

### MOTION TO URGE NUCLEAR WEAPON STATES TO REAFFIRM COMMITMENT ADOPTED

**Hon. Douglas Roche,** pursuant to notice of March 21, 2000, moved:

That the Senate recommends that the Government of Canada urge the Nuclear Weapon States to reaffirm their unequivocal commitment to take action towards the total elimination of their nuclear weapons, as called for by the

Non-Proliferation Treaty, which will be reviewed April 24 to May 19, 2000.

He said: Honourable senators, in this presentation, I wish to make three points: first, why the issue is urgent; second, what the NPT review conference should do; and third, Canada's role in advancing the nuclear disarmament agenda.

First, the urgency. When the Berlin Wall fell in 1989 and the Americans and Russians started reducing their nuclear arms, most people thought the nuclear weapons problem had evaporated with the Cold War. However, the problem did not go away. In fact, today, despite the lesser numbers than at the height of the Cold War, the threat to humanity posed by the existing 35,000 nuclear weapons is rated by many experts as worse than during the Cold War.

The U.S. Senate has rejected the Comprehensive Test Ban Treaty. The U.S. is preparing to deploy a missile defence system over the objections of Russia and China, who protest that this will start a new arms race. India is preparing to deploy nuclear weapons in the air, on land and at sea. Pakistan, which has successfully tested nuclear weapons, is now ruled by the military. Meaningful discussions at the Conference on Disarmament in Geneva are deadlocked. The Russian Duma has not ratified START II, and Russia has published a revised national security doctrine that broadens the possible scenarios in which Russia would use nuclear weapons.

Honourable senators, the gains made in the past decade on reducing the dangers posed by nuclear weapons are being wiped out. UN Secretary-General Kofi Annan warned that the non-proliferation agenda is in, in his words, "deplorable stagnation." He said:

It is even more disheartening to hear Nuclear Weapon States reiterate their nuclear doctrines, postures and plans which envisage reliance on nuclear weapons in the foreseeable future.

Since the only use of a nuclear weapon occurred in Hiroshima and Nagasaki 55 years ago, most of the world has no memory of what nuclear weapons do. They are not just an advanced form of ordinary weaponry. They have the power to decimate the natural environment which has sustained humanity from the beginning of time. Nuclear weapons produce lethal levels of heat and blast, produce radiation and radioactive fallout, exterminate civilian populations, produce social disintegration, contaminate and destroy the food chain, and continue for decades after their use to induce health-related problems.

This is a staggering compilation of damage that no amount of obfuscation, such as referring to unintended collateral damage can cover up. This is why the former president of the World Court, Mohammed Bedjaoui of Algeria, called nuclear weapons "the ultimate evil." In fact, he added that the existence of nuclear weapons challenges "the very existence of humanitarian law."

During the acrimonious years of the Cold War, with the emphasis on the military doctrine of nuclear deterrence as a constant justification for the nuclear arms buildup, the public seemed blinded to the horror of what nuclear weapons were all about; but now, in the post-Cold War era characterized by an East-West partnership, there is no excuse for shielding the public from the assault upon life itself that nuclear weapons represent.

Second, the NPT review conference. The Non-Proliferation Treaty, which came into existence in 1970, is the largest arms control and disarmament treaty in the world, with 187 nations as signatories. Its central provision, Article VI, calls for good faith negotiations leading to nuclear disarmament and to general disarmament under strict and effective international control. In fact, the NPT was constituted as a bargain between the five nuclear weapons states of the day — the U.S., the Soviet Union, now Russia, the U.K., France and China — and with the non-nuclear weapon states. In return for the nuclear weapon states giving up their nuclear weapons, the non-nuclear weapon states promised not to acquire them.

As the years mounted and the nuclear weapon states refused to negotiate going to zero, India and Pakistan charged that the NPT was a discriminatory treaty and refused to sign it. Now, with their tests of 1998, India and Pakistan have openly joined the nuclear weapons club. Israel has also not signed the NPT and has become nuclear-weapons capable. Thus, there are now eight nuclear weapons states, the five principal ones being the five permanent members of the UN Security Council.

• (1730)

The International Court of Justice, in its landmark 1996 advisory opinion, said this was unacceptable and too dangerous to tolerate, and unanimously called for the conclusion of negotiations on nuclear disarmament.

At the forthcoming NPT review conference, the records of the nuclear weapon states will be carefully examined. It will be shown that the United States and the United Kingdom have made some reductions. Russia, France and China have not.

Moreover, efforts to reduce the salience of nuclear weapons have regressed since 1995. The U.S. indicated, in its 1997 Presidential Decision Directive 60, that nuclear weapons remain the cornerstone of its security policy. NATO, at its Washington summit in April 1999, reaffirmed that nuclear weapons "will continue to fulfil an essential role" in its strategic concept, although, at the urging of Canada, Germany and Norway, the alliance agreed in principle last December to an internal review of its nuclear policy.

We must remember that the NPT, which was indefinitely extended in 1995, legally obliges its signatories to negotiate the elimination of nuclear weapons, not merely their reduction. This legal point has also been made in a political manner by the New Agenda Coalition of seven middle-power nations — Brazil, Egypt, Ireland, Mexico, New Zealand, South Africa, and Sweden — whose resolution at the United Nations last fall:

Calls upon the Nuclear Weapons States to make an unequivocal undertaking to accomplish the speedy and total elimination of their nuclear arsenals and to engage without delay in an accelerated process of negotiations, thus achieving nuclear disarmament, to which they are committed under Article VI of the NPT.

This resolution was adopted by a vote of 111 for, 13 against, and 39 abstentions, with seven of the eight nuclear weapon states voting against it. China abstained. Moreover, the western nuclear weapons states campaigned against it and have intimidated their NATO partners not to support it. To their credit, Canada and 13 other NATO members last fall at least abstained on the resolution.

Honourable senators, it is critical to global security that the NPT survive until a comprehensive plan for eliminating all nuclear weapons is negotiated. This means that the nuclear weapon states, recognizing the importance of the NPT to their own security, must be committed, without equivocation, to fulfilling their Article VI obligations.

To this end, the Middle Powers Initiative calls upon the nuclear weapon states to take the following main steps.

First, they should affirm unequivocally that there are legally binding obligations to engage in good faith negotiations, to eliminate nuclear weapons and to commence these negotiations as a matter of utmost urgency.

Then they should take clear steps to diminish the salience of nuclear weapons by reducing national and allied reliance on them by, for example, taking them off hair-trigger alert, pledging never to use them first, negotiating a legally binding agreement which assures non-nuclear weapon states that nuclear weapons will not be used against them, and committing to a prohibition on the design or development of new nuclear weapons.

Then they should also acknowledge that the NPT regime cannot endure indefinitely if a few states insist that nuclear weapons provide them with unique security benefits while denying these alleged benefits to others.

Finally, honourable senators, let me speak of Canada's role. In recent weeks, two important conferences of NGO experts have been held in Canada, designed to assist the Government of Canada to play the important role it is capable of at the NPT review conference.



A government consultation with civil society, held on February 3 and 4, heard calls for Canada to throw its support unreservedly behind the New Agenda Coalition. Some nations in NATO, observing Canada's efforts to get a meaningful review in NATO of the alliance's nuclear weapons policies, have taken to calling Canada a "nuclear nag". "More power to Canada", the participants said at the conference, and then they posed this urgent question: "How long will Canada keep the New Agenda Coalition at arm's length in the interest of working to change NATO from within?"

A second meeting, this one a joint seminar on March 18 of the Canadian Pugwash Group and Science for Peace, emphasized that Canada should work alongside the New Agenda Coalition at the NPT review conference, seek reaffirmation of the NPT Article VI commitment, and ensure that governments make new commitments to accelerate the nuclear disarmament process.

Canadian Pugwash and Science for Peace believe that Canada can, and must, provide sustained diplomatic representation to the nuclear weapon states to carry out an unequivocal commitment to nuclear disarmament. Accountability on commitments must be demonstrated by specific, concrete measures.

Honourable senators, I have discussed the urgency of the situation, the importance of the NPT review and what Canada should do. The spread of nuclear weapons is one of the most terrible threats faced by the human race. The non-proliferation treaty must be saved from unravelling. Canada, as a strong adherent of the NPT, has an opportunity and an obligation to protect this vital treaty.

I commend this motion to you.

**Hon. Sheila Finestone:** Honourable senators, I am pleased to rise in support of the motion from our colleague who, as we all know, was a very respected member of the Canadian team, Ambassador for Disarmament for the Canadian government, and led them to the UN 1985 conference on the non-proliferation treaty with respect to nuclear weapons. We are very fortunate to have this gentleman in our midst as a senator. That he would ring the alarm bells is very much in keeping with the kind of role he has played as a conscience for Canada and the world in these areas.

Senator Roche has asked: Why is this issue urgent? Is it a major concern? Is it a major issue for Canada? I may be enlarging his thought, but I believe that the thought was there, and I am sure one of his questions is: Since Canada holds that seat at the Security Council in the United Nations, what is the government doing to address that role?

Honourable senators, there are many issues and many threats that are very wide-ranging in this world, whether we are discussing the victimization, one-by-one, of people in civil conflict, or the spectre of mass annihilation from nuclear

weapons, and they are all of serious concern. These threats with respect to nuclear weapons, at their most basic, imperil all humanity. Our human security is at risk.

Often, people say that the answer is to build walls, because the threat does not really affect us, those nuclear arms are not so close by. Well, honourable senators, they are. They are just beyond our border, as Senator Roche pointed out, and it is a very important issue. We cannot turn away, ignore, retreat or shut the world out. It is not possible.

The forces of globalization are another matter. The advances in technology, the entire question of transportation and communications, rule out any form of isolation for us as Canadians. They should be an incentive for us to support the work that has been undertaken by our government and by our leadership.

I sat on the Foreign Affairs Committee in the other House. We were directed by the Minister of Foreign Affairs to undertake an in-depth study on nuclear proliferation and the role that Canada could play before achieving a seat on the Security Council.

I recall joining a group of parliamentarians who were invited to Germany to discuss issues of nuclear non-proliferation and Canada's role. There was very serious concern about the position our standing committee had taken at that time. One of the things I learned from that experience is that isolation is not desirable, nor possible, and the forces that make those issues problems for others also make them problems for us. They highlight our common humanity and connect us in a common destiny.

We have sought, in a sense, to project Canadian values about caring on to the world stage. It was T.S. Eliot who said that April is the cruellest month. If you are a minister of foreign affairs right now, and if you were about to move into the hot seat or chair of the Security Council on April 1, I think you would find that April is a crucial month. Next month, an entire confluence of events will take place: Canada's presidency of the UN Security Council and the West African Conference on War-Affected Children that Canada is co-sponsoring with Ghana. One of our honourable senators, Senator Pearson, is very involved in that the latter. Also, the Non-Proliferation Treaty Review Conference is about to take place, which the Honourable Senator Roche has brought to your attention. All eyes will be focused on all these issues. However, I do not think any of us realizes how vitally important this Non-Proliferation Treaty is with respect to human security.

• (1740)

Honourable senators, it is impossible for us not to recognize that we must promote human security at the UN Security Council. That is the way we can best address the threats to our own safety, to the safety of our families, to the safety of our society and to the safety of humanity worldwide. We cannot live in isolated ignorance and lack of understanding concerning the things that we must do.



Honourable senators, we can derive little satisfaction from the progress we have made thus far. Do not think there has not been progress, because there has; however, there is no satisfaction while the risk of nuclear annihilation looms over our collective safety. There is, quite frankly, no greater potential menace to human security.

The risks associated with nuclear arms appear to have faded from the radar screen. Do we hear anyone talking about it? Have we listened to the debates in the United States and to those men who think that they can lead the world by becoming president of the United States? Did they say one word about international affairs of any consequence? Certainly there was not a word about nuclear disarmament or the potential impact of nuclear arms.

The Honourable Senator Roche said that there are 35,000 active bombs out there, all of which are stronger than the bomb that detonated over Hiroshima. We must be concerned about this.

The risks associated with nuclear arms seem to have faded from international concern. The urgency for action has ebbed, and the structures that we have built to manage the threats are increasingly on shaky ground. We seem to have lost our way. I find it quite incredible that there are strong lobby groups out there who have not lost their way, who have seen the light and who were referred to by the honourable senator in his speech. We must encompass that will and that energy to move ahead and to ensure, by acting resolutely and together, that nuclear arms control and disarmament takes place.

Honourable senators, I do not think it can be accomplished overnight. Let us be under no illusion about that. However, the dangers are real enough. The threat to horizontal proliferation is evident. Nuclear testing in India and Pakistan has added a frightening new dimension to political instability in that region. Vertical proliferation, however, remains a challenge.

There has been undeniable progress in nuclear disarmament, but the trend by some to justify retaining nuclear arsenals as a defence against other weapons or on economic grounds is a real worry.

Those of us who were at the conference of the IPU in Brussels will remember the discussion about why we cannot expect all the holders of nuclear weapons and missiles to get rid of them in a hurry. It is hard just to get rid of them. The prospect of the illicit transfer of nuclear weapons is very disturbing.

Honourable senators, I hope that, wherever possible, we will raise the issue and that we will raise it with members of the other place. It will involve a sensitive undertaking, once again, of the

population so that we can develop the political will to move our people forward.

I should like to remind honourable senators that Canada remains firmly committed to the role of nuclear non-proliferation. An effective NPT is the centrepiece of a non-proliferation regime. There are only four states that have not signed it. It is the most widely adhered to international security court in history. In a month's time, we will go to an NPT review conference, the first since its extension in 1995. The success of this conference is crucial. The future course of nuclear weapons, attitudes, policies and arsenals is at stake. I suggest, however, that the outlook is quite clouded. There is a sense that the fundamental deal at the heart of the treaty — a promise by those without nuclear weapons not to acquire them in exchange for an undertaking by the nuclear weapon states to eventually get rid of them — is not being respected by some on either side. There is, likewise, a feeling that the commitment by the nuclear weapon states to the concept of "permanence with accountability" — that is, extending the NPT indefinitely in exchange for greater accountability by others — is not being met.

In response to the third point made by the Honourable Senator Roche, which is about Canada's role in the entire area, the Minister of Foreign Affairs has said there is a three-fold response: securing agreement to an updated five-year action program with new, concrete objectives for disarmament and non-proliferation; seeking a more robust review and assessment process to give full meaning to the principle of permanence with accountability; and promoting universal adherence to the NPT, with renewed commitment by treaty member states to live up to their obligations. A strengthened NPT is indispensable; so is reinforcing other parts of the non-proliferation regime.

Honourable senators, there are other issues that we will not deal with today, but Canada is pressing in all these areas. In these circumstances, it is not surprising that there should be concern. Canada fully concurs and shares in the worries expressed and the point of view you have raised today. I suggest, however, that unilateral efforts to build defences against these dangers are unlikely to provide a lasting security and might possibly increase insecurity with what is happening around the world.

The other crucial factor in all these efforts is the role of individual citizens and civil society. Political will and energy are required to restore vital momentum to raise the issue of nuclear weapons control and reduction that is not generated in the stale basements of the United Nations or certainly in the closed council chambers in Geneva. In democracies such as ours, there is a vital and important role to be played by citizens. In order to capture the minds and the hearts of people, we must work collaboratively with the NGOs. They are a vital and important force.

I would commend the NGOs to continue their effort. In discussion with Senator Roche earlier, I asked how we can tackle the notion that we should be moving forward with great energy. Perhaps we could all face the cabinet and tell them that this has to stop now. He said that the only way we will move this forward is to ensure that the NGOs gather 10,000 to 20,000 people, line them up on Parliament Hill and yell. I do not think that will get us very far now, but I do think that tens of thousands of people need to get out there and let MPs know that this is where we want to go. Our Minister of Foreign Affairs certainly knows. He has provided an undertaking to make things work well at the UN Security Council, and we wish him well in trying to meet the goals and aspirations of Canadians.

An important comment was made at the UN General Assembly in its Declaration on the Prevention of Nuclear Catastrophe in 1981, which summarized all the foregoing facts. A senator brought that to our attention. It stated that:

All the horrors of past wars and other calamities that have befallen people would pale in comparison with what is inherent in the use of nuclear weapons capable of destroying civilization on earth.

This is the ultimate evil.

• (1750)

Honourable senators, I hope we will move on this motion. It is well founded and most fortuitous at this particular time. I hope the discussions go well on April 24 and afterwards.

**Hon. Senators:** Hear, hear!

**Hon. Noël A. Kinsella (Deputy Leader of the Opposition):** Honourable senators, on behalf of the opposition, I commend our colleague Senator Roche for continuing with an initiative in this field in which he has already distinguished himself and in which he has brought credit to his country.

We certainly support the recommendations that the Senate would give to the Government of Canada urging that the nuclear weapons states give their unequivocal commitment to take action towards the total elimination of their nuclear weapons, as called for by the Non-Proliferation Treaty which, as already mentioned, will be reviewed this April and May.

In addressing this motion and the recommendation that it makes to the Government of Canada, I am reminded of the words of Martin Luther King who once stated: "I refuse to accept the cynical notion that nation after nation must spiral down a militaristic stairway into the hell of nuclear annihilation."

Those words came to mind as I reflected during these two excellent interventions this afternoon. I wondered about the frame of reference, the model of analysis at the beginning of the 21st century within which the question of the non-proliferation of

nuclear weapons ought to be cast. The question I ask is whether the paradigm of the 1970s, the 1980s and the 1990s is the appropriate paradigm for framing international action to achieve the objective of a world that is free of nuclear arms.

It seems to me that there are some very important principles but, effectively, the international community did develop during that era. On the one hand, the dynamics of international politics then demonstrated a step-by-step approach to dealing with the early attempts to limit nuclear arms. On the other hand, it was facilitated perhaps in more recent times by the geo-political change in the world community, particularly with the fall of the Iron Curtain.

Perhaps we should review what was happening then. That might be helpful as our government and other governments attempt to deal with eradication from the world community of nuclear arms.

We have perceived in the human rights field a move from a first generation of human rights dealing with civil and political rights issues, to a second generation of rights dealing with economic, social and cultural rights. Now a new generation of rights has been achieved by the world community in recent times and it has been referred to as solidarity rights, environmental rights and rights to peace. In the world community, our international culture in the year 2000 is the culture, to use the jargon, of "the global village." It may be jargon but it is true.

Not only is there a political restructuring, an economic structuring of which we often speak, there is a world cultural restructuring which is taking place.

Perhaps our government and other governments can attempt to conceptualize new world policy and the elimination of nuclear weapons in terms of this new generation of rights which speaks to the solidarity of all people. These weapons of mass destruction can affect each and every one of us on planet Earth. This is why it is a solidarity issue. I simply submit that proposition.

The non-governmental organizations which have been referenced obviously play a critical role, not only in this area but in so many other areas. Sometimes it would appear that non-governmental organizations are ahead of governments. We need not be surprised by that. Although some policy-makers resist the pressures which are brought to bear on public issues by non-governmental organizations, generally speaking, all governments attend quite judiciously to non-governmental organizations' comments.

We should remind ourselves of one of the things which most impressed Alexis de Tocqueville upon his visit to America in the last century. He wrote of it in his book on America and he stated his belief that the key to American democracy and freedom was the existence and the activity of so many non-governmental organizations.



I should like to underscore Senator Finestone's comments, not simply because it is the politically correct thing to say, but rather because the role of the non-governmental organizations speaks directly to international solidarity.

**Hon. Senators:** Hear, hear!

**The Hon. the Speaker *pro tempore*:** Is it your pleasure, honourable senators, to adopt this motion?

**Hon. Senators:** Agreed.

Motion agreed to.

[Translation]

### ADJOURNMENT

Leave having been given to revert to Notices of Government Motions:

**Hon. Dan Hays (Deputy Leader of the Government):** Honourable senators, with leave of the Senate and notwithstanding rule 58(1)(h), I move:

That, when the Senate adjourns today, it do stand adjourned until tomorrow, Wednesday, March 29, 2000, at 1:30 p.m.;

That at 3:30 p.m. tomorrow, if the business of the Senate has not been completed, the Speaker shall interrupt the proceedings to adjourn the Senate;

That should a division be deferred until 5:30 p.m. tomorrow, the Speaker shall interrupt the proceedings at 3:30 p.m. to suspend the sitting until 5:30 p.m. for the taking of the deferred division; and

That all matters on the Orders of the Day and on the Notice Paper, which have not been reached, shall retain their position.

Motion agreed to.

The Senate adjourned until Wednesday, March 29, 2000, at 1:30 p.m.



# CONTENTS

Tuesday, March 28, 2000

	PAGE		PAGE
<b>SENATORS' STATEMENTS</b>		<b>Statistics Canada</b>	
<b>Referendum Clarity Bill (Bill C-20)</b>		Possibility of Lowering Threshold for Cities to Achieve Metropolitan Status. Senator Robertson .....	841
Comments by Leader of the Government During Debate.		Senator Boudreau .....	842
Senator Joyal .....	837	<b>Referendum Clarity Bill (Bill C-20)</b>	
<b>The Late Barbara Clement</b>		Application of Terms. Senator Rivest .....	843
<b>The Late David Elton</b>		Senator Boudreau .....	843
<b>The Late Brodie McDonald</b>		Senator Kinsella .....	844
Tribute. Senator Hays .....	837	<b>Delayed Answers to Oral Questions</b>	
<b>Parliamentary Vision for International Cooperation at the Dawn of the Third Millennium</b>		Senator Hays .....	844
Senator Wilson .....	838	<b>National Defence</b>	
<b>Visit to Israel by Pope John Paul II</b>		Provisions of Naval Service Act.	
Senator Austin .....	838	Question by Senator Ruck.	
<b>New Brunswick</b>		Senator Hays (Delayed Answer) .....	844
Thirty-fifth Anniversary of Provincial Flag. Senator DeWare ...	838	<b>Budget 2000</b>	
		Long-Term Benefits to Taxpayers.	
		Question by Senator Tkachuk.	
		Senator Hays (Delayed Answer) .....	844
<b>ROUTINE PROCEEDINGS</b>		<b>ORDERS OF THE DAY</b>	
<b>State of Domestic and International Financial System</b>		<b>Business of the Senate</b>	
Interim Report of Banking, Trade and Commerce Committee on Study Tabled. Senator Kolber .....	839	Senator Hays .....	845
<b>Payments in Lieu of Taxes Bill (Bill C-10)</b>		<b>Canada Elections Bill (Bill C-2)</b>	
First Reading. ....	839	Second Reading. Senator Di Nino .....	845
<b>Canadian Radio-television and Telecommunications Commission</b>		Senator Finestone .....	847
Notice of Motion Urging Reconsideration of Ruling Denying TV Ontario Request to Distribute Télévision française de l'Ontario in Quebec. Senator Gauthier .....	839	Senator Kinsella .....	850
		Senator Cools .....	850
		Senator Carstairs .....	851
		Senator Hays .....	852
		Senator Milne .....	852
		Referred to Committee. ....	852
<b>QUESTION PERIOD</b>		<b>The Estimates, 1999-2000</b>	
<b>National Defence</b>		Report of National Finance Committee on Supplementary Estimates (B) Adopted. Senator Murray .....	852
Report on Restructuring Reserves—Viability of Militia.		Senator Cools .....	853
Senator Forrestall .....	840	Senator Kinsella .....	853
Senator Boudreau .....	840	<b>The Estimates, 1999-2000</b>	
Cape Breton—Future of New Reserve Facility.		Report of National Finance Committee on Main Estimates Adopted.	
Senator Forrestall .....	840	Senator Murray .....	853
Senator Boudreau .....	840	<b>The Estimates, 2000-01</b>	
<b>Referendum Clarity Bill (Bill C-20)</b>		Report of National Finance Committee on Main Estimates Adopted.	
Size of Majority of Valid Vote and Percentage of Eligible Voters— Comparison with Constitutional Amendment to Term 17		Senator Murray .....	853
Regarding Newfoundland. Senator Cogger .....	840		
Senator Boudreau .....	841		

**Appropriation Bill No. 4, 1999-2000 (Bill C-29)**

Second Reading, Senator Cools .....	853
Senator Murray .....	855
Senator Kinsella .....	856
Senator Keon .....	856

**Business of the Senate**

Senator Hays .....	856
--------------------	-----

**Canada Business Corporations Act****Canada Cooperatives Act (Bill S-19)**

Bill to Amend—Second Reading—Debate Adjourned.	
Senator Kirby .....	856

**Visitors in the Gallery**

The Hon. the Speaker <i>pro tempore</i> .....	859
---	-----

**Appropriation Bill No. 1, 2000-01 (Bill C-30)**

Second Reading, Senator Cools .....	860
Senator Murray .....	861
Senator Kinsella .....	862

**Financing of Post-Secondary Education**

Inquiry—Order Stands, Senator Hays .....	864
--	-----

**Future of Canadian Defence Policy**

Inquiry—Order Stands, Senator Hays .....	864
--	-----

**Review of Anti-Drug Policy**

Motion to Form Special Senate Committee—Order Stands.	
Senator Hays .....	865

**Asia-Pacific Parliamentary Forum**

Eighth Annual Meeting—Inquiry—Debate Adjourned.	
Senator Carstairs .....	865

**Review of Non-Proliferation Treaty**

Motion to Urge Nuclear Weapon States to	
Reaffirm Commitment Adopted, Senator Roche .....	866
Senator Finestone .....	868
Senator Kinsella .....	870

**Adjournment**

Senator Hays .....	871
--------------------	-----



*If undelivered, return COVER ONLY to:*  
Public Works and Government Services Canada —  
Publishing  
45 Sacré-Coeur Boulevard,  
Hull, Québec, Canada K1A 0S9



CA 1  
Y1  
-D32

Government  
Publications



CANADA

# Debates of the Senate

---

2nd SESSION • 36th PARLIAMENT • VOLUME 138 • NUMBER 40

---

OFFICIAL REPORT  
(HANSARD)

Wednesday, March 29, 2000

---

THE HONOURABLE ROSE-MARIE LOSIER-COOL  
SPEAKER PRO TEMPORE



## CONTENTS

(Daily index of proceedings appears at back of this issue.)

## OFFICIAL REPORT

### CORRECTIONS

*[Editor's Note: The following footnote, missing from delayed answers in response to questions asked by Senator Tkachuk on February 29 and March 1, 2000 and tabled in the Senate on March 21 and 28 respectively, will be inserted in the bound volume following the responses on pages 783 and 844.]*

<sup>1</sup>Notes:

– 2000 budget impacts are not provided in the 2000 Budget Plan documents. These impacts were not included as they do not present a full picture of tax reductions announced in the 2000 budget. Some measures come into effect mid-year 2000 while others do not come into effect until 2001.

Those measures that are effective July 1, 2000 are:

- the elimination of the 5-per-cent surtax for those earning less than \$85,000; and
- the reduction of the middle rate from 26 per cent to 24 per cent.

Those measures that are effective in 2001 are:

- the reduction of the 5-per-cent surtax to 4 per cent.

---

**Hon. Lorna Milne:** Honourable senators, I rise on a point of order.

In the *Debates of the Senate* for Tuesday, March 28, the last paragraph at the bottom of page 852, I am quoted as saying "...that the first woman was elected to the House of Commons in 1929." Since Agnes Macphail was a cousin of my father-in-law, the family will not allow me to forget that she was actually elected in 1921. I am sure that is what I said.





## THE SENATE

Wednesday, March 29, 2000

The Senate met at 1:30 p.m., the Speaker *pro tempore* in the Chair.

Prayers.

### ROUTINE PROCEEDINGS

#### NISGA'A FINAL AGREEMENT BILL

REPORT OF COMMITTEE

**Hon. Jack Austin**, Chair of the Standing Senate Committee on Aboriginal Peoples, presented the following report:

Wednesday, March 29, 2000

The Standing Senate Committee on Aboriginal Peoples has the honour to present its

#### FOURTH REPORT

Your Committee, to which was referred Bill C-9, an Act to give effect to the Nisga'a Final Agreement, has, in obedience to the Order of Reference of February 10, 2000, examined the said Bill and now reports the same without amendment, but with the observations appended to this report.

Respectfully submitted,

JACK AUSTIN  
*Chair*

#### OBSERVATIONS

##### to the Fourth Report of the Standing Senate Committee on Aboriginal Peoples

During the course of its hearings on Bill C-9, your Committee heard testimony concerning the potential impact of the Nisga'a Final Agreement on unresolved overlapping land claims of the Gitksan and Gitanyow Nations in the Nass Valley region of northern British Columbia. Your Committee recognizes that the parties have attempted to address this question by including provisions in the Nisga'a Final Agreement that aim to preserve and protect the rights of Aboriginal peoples other than members of the Nisga'a Nation. Your Committee is nevertheless deeply concerned about the implications of outstanding overlap issues, not only in relation to the Nisga'a and neighbouring First Nations,

but also in the broader context of the ongoing British Columbia treaty process involving over 50 First Nations. Your Committee therefore strongly urges the federal government and its negotiating partners to pursue vigorously all means at their disposal to ensure that overlap issues are resolved to the satisfaction of concerned First Nations prior to the conclusion of future land claim agreements.

**The Hon. the Speaker *pro tempore*:** Honourable senators, when shall this bill be read the third time?

On motion of Senator Austin, bill placed on the Orders of the Day for third reading at the next sitting of the Senate.

#### CIVIL JUSTICE SYSTEM

NOTICE OF MOTION TO ESTABLISH  
SPECIAL SENATE COMMITTEE

**Hon. Anne C. Cools:** Honourable senators, pursuant to rule 56(1) and 57(1)(d), I hereby give notice that two days hence I shall move:

That a Special Committee be appointed to examine the civil justice system in Canada, including its operations, costs and availability to litigants, and the role of legal aid, in the context of family law with special emphasis on the impact of false allegations of child or spousal abuse within custody proceedings on both the administration of justice and on the litigants and their immediate families;

That the Committee have the power to consult broadly, to examine relevant research studies, case law and literature;

That the Senate Special Committee on civil justice in Canada shall be composed of 5 senators, 3 of whom shall constitute a quorum;

That the Committee have the power to report from time to time, to send for persons, papers and records, and to produce such papers and evidence as may be ordered by the Committee;

That the Committee have the power to sit during the adjournment of the Senate;

That the Committee have the power to retain the services of professional, technical and clerical staff, including legal counsel;

That the Committee have the power to adjourn from place to place within Canada;

That the Committee have the power to authorize television and radio broadcasting of any or all of its proceedings; and

That the Committee shall make its final report no later than 1 year from the date of its organization meeting.

## QUESTION PERIOD

### NATIONAL DEFENCE

#### RESCUE OPERATION AT SEA—CONDITION OF FOURTH SEA KING HELICOPTER ASSIGNED TO TASK FORCE

**Hon. J. Michael Forrestall:** Honourable senators, I have a question for the Leader of the Government in the Senate. It has to do with the very historic rescue of 12 seamen from a stricken Panamanian bulk carrier. Two of four Sea King helicopters available participated in that rescue. Certainly, their crews performed yeoman service and should be commended from the highest places for it. Through no fault of its crew, one of the other two Sea Kings available to the task force was missing its radar and other equipment necessary for night operations, leaving one helicopter unaccounted for.

• (1340)

Could the Leader of the Government tell us why the fourth Sea King in the task force was not launched to take part in the rescue operation? Was that helicopter elsewhere? Was it inoperable? Were there not enough air crew members for all four Sea Kings?

**Hon. J. Bernard Boudreau (Leader of the Government):** Honourable senators, I should like to join with the honourable senator and commend all of those involved in this operation for their remarkable and dedicated service.

As to whether the fourth Sea King was required to be in service or whether there were other operational requirements, obviously I cannot say at the moment. I am certainly prepared to make inquiries specifically with regard to that question and return to the chamber with the information for the honourable senator as quickly as possible.

**Senator Forrestall:** Honourable senators, does the minister think it is incumbent upon Canada not to send helicopters to sea that are not capable of carrying out their missions? Surely he would at least agree with that.

If the minister makes inquiries, can he find out why the Sea King was missing its radar and other necessary equipment for hovering at night? Was this one of the helicopters scavenged to make it possible for the other three to fly? Considering the low reliability factor of the Sea Kings, all four may not have been

available that particular night. How would the government explain to the people of the world that kind of embarrassment?

**Senator Boudreau:** Honourable senators, as Senator Forrestall I am sure will agree, I do not wish to speculate on what the operational requirements were on that particular evening, indeed, whether there was any normal availability of that fourth aircraft, and, if not, why that might have been the case. I can simply say that I have continually sought reassurances that the equipment and the personnel we send to these often very dangerous missions do a remarkable job, and demonstrate competence and dedication to the task at hand. I am further assured that the equipment they serve on is capable of fulfilling the mission safely.

**Senator Forrestall:** Honourable senators, the minister has missed the point of my question. We had four Sea Kings on that task force. Was one of them embarked on that task force solely for the purpose of being scavenged for spare parts for the other three? Does the minister not believe that when we send vessels to sea they should be equipped to carry out the missions for which they are tasked, otherwise we should not send them? Does the minister not agree with that common-sense approach?

When the Leader of the Government is questioning the Minister of National Defence, would he put that simple proposition to the minister? Why in hell would we send four Sea Kings to sea if they did not work?

**Senator Boudreau:** Honourable senators, my honourable friend is questioning which aircraft were deployed and for what purpose. They are all very important operational questions. I will convey the honourable senator's inquiry to the Minister of National Defence. I can only assume at this stage that there were very clear operational requirements for the equipment as it was deployed, but I will ask the questions and attempt to bring back a more specific answer to the honourable senator as soon as possible.

### HUMAN RESOURCES DEVELOPMENT

#### JOB CREATION PROGRAMS—POSSIBLE MISMANAGEMENT OF FUNDS—REQUEST FOR INQUIRY

**Hon. W. David Angus:** Honourable senators, when I rose here last Thursday, I thought it would be the last time I would be talking about this HRDC matter and all that arises therefrom. I thought we could get into a more healthy situation, given my interest and the government's interest in revitalizing and restructuring our health care system.

As honourable senators will recall, in my supplementary question last Thursday, I indicated that news had just come to hand from the Auditor General, saying that the mismanagement of grants of public monies has a much more general application throughout the departments of government. In the ensuing releases that were available on Friday and over the weekend, it has become apparent that this is a deep-seated malaise within our public administration.



This morning, the front page of *The Ottawa Citizen*, that well-known journal, indicated:

The dilution of responsibility in the Human Resources Development Canada job grants fiasco underscores the need for a full-scale inquiry into the operations of government, say experts in public administration.

"It will be a textbook case that touches on the most important issues of public administration: the role of elected officials, the role of Parliament and accountability. You can't get much more basic than that," said Donald Savoie, a political scientist at the Université de Moncton.

In my questioning of the Honourable Leader of the Government in the Senate in late February, I did ask on several occasions — and I think he will recall that I did — whether the government is prepared to call an inquiry. I ask the minister again today. Is the government now, in the face of all of this incontrovertible evidence of a breakdown in the proper and businesslike management of public funds in this country, prepared to call a full and complete commission of inquiry into this unsavoury and troubling situation?

**Hon. J. Bernard Boudreau (Leader of the Government):** Honourable senators, I thank the Honourable Senator Angus for raising this topic once again. Given his recent comments, I would have been disappointed if that had not been the case.

I anticipated that the honourable senator might raise this topic again, in spite of the comments of the last day, and had occasion to obtain a copy of the testimony of the Auditor General and read it prior to today's sitting. I did not bring it with me, but I can recall some of the points that I wish to share with honourable senators in relation to that testimony.

First, I thought the testimony was reasonably balanced and that the Auditor General made a number of very important points. Mr. Desautels gave the audit that was done great credibility. He said it was a credible and competent audit. I think Senator Angus was calling for an independent audit because he was concerned that the internal audit perhaps was not as thorough, as good or as competent as it should have been. When I read the comments of the Auditor General, I thought that Senator Angus would now be satisfied and reassured that the original audit was thoroughly and competently done.

Honourable senators, the next thing the Auditor General said in his testimony was that he had examined the multi-faceted program put in place by the minister to deal with the issues raised by the audit. The Auditor General said he was satisfied with the credible steps taken by the minister. The Auditor General thought that was a legitimate, competent approach to the evidence raised in the audit. Therefore, he was pleased with the HRDC response.

The third matter that comes to mind from the testimony of Mr. Desautels, which may be of interest to honourable senators is

when he was asked if he had any views on why some of these problems may have arisen.

• (1350)

The Auditor General said, and I am paraphrasing now because I do not have the material before me, that there may have been an overemphasis on the customer service aspect of these programs. In other words, the department was perhaps going too far to service the clientele who, by the way, are Canadians. That is something to be concerned about, but if there is a fault that is forgivable or at least understandable here, it would be that fault. Of all of the things he might have said when asked the question, "How do you think some of these deficiencies occurred," that was the answer that most pleased me.

**Senator Angus:** Honourable senators, I thank the minister for that comprehensive answer. I am pleased to note that we are getting his attention, that he is anticipating that he will have to deal with this horrendous situation and is doing his research.

What the Auditor General said about the interim audit carried out in HRDC was that this audit dealt only with record-keeping. He said he will now conduct an audit into HRDC and the very effectiveness of the six-point action plan ordered by the HRDC minister, the Honourable Jane Stewart, to clean up the mess. The Auditor General described the problem as persistent, serious and ranking at the very top of his concerns. He said he would look into the possibility of money being spent in ways that would not achieve its intended purpose. The Auditor General even said that this terrible situation was the most disturbing one that he had encountered in his nine years in that function.

Will the government please call a full inquiry into this matter so we can clean it up and give Canadians a sense of confidence in their administration again?

**Senator Boudreau:** Honourable senators, the Auditor General referred to two types of audits in his testimony. It is important to distinguish between them, as the honourable senator did to some extent. One of them is an accounting audit which checks to ensure that the money was properly paid out; that payments conformed with the program; and that when payment was made, a receipt was issued. Checks were made to ensure that the entire audit trail was in place and properly carried out. That is the type of audit that was done internally. We know the results, and we know that the minister has acted, according to the Auditor General, in an appropriate way.

Above and beyond the accounting audit is what I used to refer to as a "value-for-money" audit, which involves an examination of the programs to see if they are achieving the goals to which the policy had directed the programs. Auditors general, historically, have pushed the envelope in this direction to determine, from a value-for-money approach, whether programs are doing the types of things they are meant to do. That is an entirely different type of audit and over the past 20 years, auditors general in every government in this country have been pushing harder into that area.



This auditor general is no different. He wants to push harder into that area, too. There is a line somewhere — and I am not quite sure where it is drawn — over which an auditor general moves from accounting policy into public policy. That has been a moving goalpost for a number of years.

The honourable senator asked if we would support an inquiry. The Auditor General outlined what he felt was appropriate in his testimony. He will pursue the matter and, in fact, we will have more and more of these value-for-money audits.

**Senator Angus:** Honourable senators, good Nova Scotians like the minister and me, understand the difference between yes and no. Do I understand that the leader's answer is no, the government will not order and conduct a full-blown commission of inquiry into this situation?

**Senator Boudreau:** Honourable senators, I have no indication at this time that the government will do such a thing.

## AGRICULTURE AND AGRI-FOOD

### EFFECT OF HIGH FUEL COSTS ON FARM COMMUNITY

**Hon. Leonard J. Gustafson:** Honourable senators, my question to the minister and the government is about the increased fuel prices that have been of great concern to all Canadians in every area but more particularly in agriculture. Everything that is done in agriculture creates an energy cost. According to the Keystone Agricultural Producers who appeared before the Senate committee, a 3,000-acre farm in Manitoba that had fuel costs of approximately \$33,750 last year, will have costs of \$47,250 this year.

Even if a farmer receives the whole amount of the recently announced Canada-Manitoba Adjustment Payment, or CMAP, it will cover only 80 per cent of that increase in the cost of fuel. The farmers have no way to pass on this cost or absorb that kind of expense. Has the government looked at these fuel costs in regard to farmers?

I can recall Otto Lang making a positive comment about what he would like to see done for farmers. He said that we need different fuel rates for agriculture than for the general public. This is a very serious problem for farmers. Would the minister look into the matter and carry that message to cabinet?

**Hon. J. Bernard Boudreau (Leader of the Government):** Honourable senators, of course I will carry such a message to cabinet. The government has shown a level of concern in this area, even though regulation of gas prices, as the honourable

senator knows, falls within the jurisdiction of the provincial governments.

The recently announced Conference Board of Canada study will give us an opportunity to look at the entire picture. In any kind of action, we want to be sure we understand all the factors that have an impact on price. Any action that might be taken by provincial governments or other parties should be the most effective possible.

I also offer to honourable senators some news of which you may already be aware. OPEC members have agreed to increase their daily production by almost 1.5 million barrels. That in itself is not an answer, but supply is an important factor in pricing. By increasing the supply, the hope is that the price will be depressed.

**Senator Gustafson:** Honourable senators, we are all aware that a barrel of oil has gone from \$10 to \$32. That is my point, that oil companies have a way of protecting themselves and doing it very quickly. The farmers do not have the same ability to recover their costs. Farmers in the food chain today are getting such a small amount of the actual food charge that they cannot bear the cost of these increased fuel costs.

Just to make the point, I take a little can of gas and use it to take a load of wheat to the Macoun Co-op. That is a cost of just over \$5, which is equivalent to two bushels of wheat. A big tractor can cost \$800 to fill. Some farmers must fill three or four tractors. The costs are unbelievable. I cannot stress enough the importance of these fuel costs because they can wipe out everything the government has done to try to help. As positive as those efforts were, these increases in fuel costs can wipe out those efforts. Would the minister please carry the seriousness of this cost increase in fuel to the cabinet?

**Senator Boudreau:** Honourable senators, of course, I will convey, as I have in the past, the honourable senator's concerns in this area, particularly with respect to the situation of farmers dealing with increased oil costs. The fluctuations in oil prices have been quite dramatic over the past 10 years, resulting in fairly unpredictable cost levels for Canadians in all walks of life. As the honourable senator points out, this situation has a direct impact on the farmers of this country. Once we have conducted an independent and thorough study of this question, I hope that we will be able to understand more clearly how we might have an impact on that situation and, perhaps, avoid these wild swings in price.

• (1400)

**Senator Gustafson:** The minister will know as well that the government receives a lot of money from taxes that accrue to the federal and provincial governments. I sat on the Energy Committee during the Lalonde days, when we were nailed with \$9-billion worth of exchange that went to Eastern Canada. It was a pretty serious situation. At that time, the percentages were very high. An awful lot of the cost of a gallon of fuel goes to both the federal and the provincial governments. Surely, because of this increased money that comes to the coffers, they could give some serious consideration to this matter.

**Senator Boudreau:** Honourable senators, in spite of the question of jurisdiction that rests with the provinces, the Government of Canada has and continues to be concerned. It is attempting to act prudently by commissioning an independent and thorough study of the situation. We do not want to act precipitously in one direction only to have price swings wildly in the other direction and see the action that we took wiped out overnight.

I hear the honourable senator's concern, specifically as it relates to farmers, and I will pass that concern along.

## ORDERS OF THE DAY

### BUSINESS OF THE SENATE

**Hon. Dan Hays (Deputy Leader of the Government):** Honourable senators, under Government Business, I should like to call No. 1 and No. 2, the supply bills, as indicated on the Order Paper. After we have dealt with those items, I should like to call Order No. 4, Bill C-20, and then follow the order of business as set out in the Order Paper.

### APPROPRIATION BILL NO. 4, 1999-2000

#### THIRD READING

**Hon. Anne C. Cools** moved the third reading of Bill C-29, for granting to Her Majesty certain sums of money for the public service of Canada for the financial year ending March 31, 2000.

She said: Honourable senators, there is sufficient and clear consensus on behalf of all of us here that this bill should proceed to third reading. I also wish to state again, very clearly for the record, that I took Senator Kinsella's remarks yesterday with some seriousness, and I am sure the government has also. I wish to reiterate that I think all honourable senators are well aware that the defeat of a bill such as this would certainly result in either a resignation of a government or a defeat of a government. I wanted to make that point.

With the permission of honourable senators, I should like to make a correction to Hansard. Yesterday's record of my speech contains a slight error. On page 853 of my speech at second reading on Bill C-29, the third paragraph reads, "Later the same day, the Senate adopted that report." That sentence should read, "Earlier today, the Senate adopted that report."

Having said that, honourable senators, I think the question should now be put.

**The Hon. the Speaker *pro tempore*:** Is it your pleasure, honourable senators, to adopt the motion?

**Hon. Senators:** Agreed.

Motion agreed to and bill read third time and passed.

### APPROPRIATION BILL NO. 1, 2000-01

#### THIRD READING

**Hon. Anne C. Cools** moved the third reading of Bill C-30, for granting to Her Majesty certain sums of money for the public service of Canada for the financial year ending March 31, 2001.

She said: Honourable senators, once again I shall reiterate that there is clear and unanimous consensus on both sides of the chamber to move this bill along and to give it third reading. I wish to restate, for the sake of the record and for the sake of clarity, the very important role that the Senate was given in respect of the finances and expenditures of Her Majesty's government.

Having said that, honourable senators, I think we can proceed with some dispatch. I am eager and willing to hear what Senator Lynch-Staunton has to say on Bill C-20, so I shall delay no more.

**The Hon. the Speaker *pro tempore*:** Is it your pleasure, honourable senators, to adopt the motion?

**Hon. Senators:** Agreed.

Motion agreed to and bill read third time and passed.

### BILL TO GIVE EFFECT TO THE REQUIREMENT FOR CLARITY AS SET OUT IN THE OPINION OF THE SUPREME COURT OF CANADA IN THE QUEBEC SECESSION REFERENCE

#### SECOND READING—DEBATE CONTINUED

On the Order:

Resuming debate on the motion of the Honourable Senator Boudreau, P.C., seconded by the Honourable Senator Hays, for the second reading of Bill C-20, to give effect to the requirement for clarity as set out in the opinion of the Supreme Court of Canada in the Quebec Secession Reference.

**Hon. John Lynch-Staunton (Leader of the Opposition):** Honourable senators, in my wildest imagination, I never thought that there would come a day when the Parliament of Canada would be asked to approve a bill intended to sanction conditions under which the breakup of this country could ensue. Even less did I ever see myself as a participant in such a debate. I do so with great reluctance, as passage of Bill C-20 will confirm secession as a valid and legal objective. I simply do not accept that this option should ever be before Parliament, much less sanctioned by it.



Bill C-20 denies the history of this country — one of continuous and oftentimes painful negotiation between its partners. It denies the basic makeup of this country, a voluntary association able to accommodate all but the most extreme demands made on it. It abandons the principle of flexibility which allows any region to advance its individuality without compromising that of the others.

The background of Bill C-20 is as deplorable as Parliament having to debate it. In September 1996, the Attorney General of Canada sought from the Supreme Court the answer to three questions: Can Quebec legally secede under domestic law? Can Quebec legally secede under international law? If yes to both, which predominates? One did not have to be even a first-year law student to know the answers, but the minister no doubt felt that by dragging the Supreme Court into the political arena, it would gladden the hearts of many, particularly those in areas where Quebec-bashing is a popular sport. Had the court, however, limited itself strictly to answering the questions, Parliament would not be put in the awkward position it is in presently. Instead, for reasons known only to itself, the court went way beyond the reference and set out in broad and vague language under what conditions the breakup of the country could be negotiated.

• (1410)

In a most extraordinary trespassing on the jurisdiction of Parliament and every provincial legislature, the Supreme Court gave legitimacy to separation, and now the government is using the Supreme Court as justification to confirm secession as a lawful objective.

It might interest honourable senators to know that in the 1996 study produced for the C.D. Howe Institute, it was found that of 89 constitutions examined, “82 do not permit secession of a part of a state’s territory under any circumstances,” and 22 of this latter group contain explicit prohibitions of secession. In addition, one has yet to find a single government that would not reject out of hand the notion that it preside over the breakup of the country.

As well, no less a constitutional authority than Peter Hogg, the Dean of Osgoode Hall Law School, said in his book entitled *Constitutional Law of Canada* that:

The attitude of a federal government — any federal government — to a secession movement may be confidently predicted to be more or less hostile. The government may be expected to take the view that it did not assume office to preside over the dissolution of the federation.

This government has yet to properly explain why it rejects what has seldom been rejected by all its predecessors.

This bill, like the Supreme Court opinion it relies on, is provocative and incomplete. It does not specify a question or define a majority. Bill C-20, like the court, uses the word “clear”, while staying away from defining it. The House of Commons alone will decide that, which means the government, which means the Prime Minister’s Office to which for years the House has casually abandoned much of its authority. This alone makes the bill reprehensible and not worthy of support. One person surrounded by an unelected coterie of faithful insiders will decide upon the propriety of the question and whether the support it receives can or cannot lead to negotiating the breakup of Canada.

What obviously matters to this government is not the long-term damage this legislation will cause but the short-term political gains it believes it brings. Bill C-20 was condemned by the Quebec government and its satellite operation in Ottawa, while being received enthusiastically in many parts of the country, and revealed open dissension in more than one opposition party. These initial results have, no doubt, caused much joy in the Langevin Block.

[Translation]

Honourable senators, we have to admit, if we are to believe the comments and polls, that, initially, a vast majority of Canadians welcomed the bill and that the violent reaction of the Government of Quebec is still not shared across the province. This is no surprise.

For forty years, few headlines have not referred to Quebec’s grievances, real or imagined, whatever the government in office. The slogans are similar and lend themselves to over-interpretation. “Maîtres chez nous”, “égalité ou indépendance” and “souveraineté-association”, for example, are the natural heirs of what was once called “autonomie provinciale”.

The exhaustion and the frustration caused by the uncertainties generated by such crises are felt in Quebec as well and not just by its minority language. However, we must not forget that the history of Quebec, even before 1867, is marked by efforts aimed at survival and recognition, efforts too often misunderstood and rejected by an often indifferent, if not hostile, majority.

[English]

Far be it for me to attempt even a brief history of Quebec, from an agricultural society dominated by political and religious elites to an industrial one free of the discipline and fear these elites imposed for far too long. No one must forget, however, that whatever the nature of Quebec society, there is one constant which changes only in emphasis, not in nature: that of not just keeping a unique identity in North America, but in resisting all threats to it, perceived and real.



Nationalism as we know it in Quebec today is not new, only the way it is being expressed. Most historians trace Quebec's nationalism origins to 1885, when the French-speaking Catholic Louis Riel was hanged. Later, Manitoba withdrew its support of denominational schools and then disallowed the use of French in the legislature and in the courts.

The establishment of Alberta and Saskatchewan in 1905 included little to guarantee Catholic minority rights. In 1912, Ontario adopted Regulation 17, severely limiting the instruction of French; and in 1916, the Privy Council ruled that the French language was constitutionally protected only in the courts and in the Canadian and Quebec Parliaments.

The reaction throughout was a belief that the compromises that led to the approval of the federation and the belief that French Canadian rights were the same across the country had been betrayed. Quebec turned onto itself and promoted the idea that Canada resulted from an agreement between two founding peoples, not from an agreement between four colonies. Only Quebec could henceforth protect and further its majority's culture, as the rest of the country had abandoned its commitment to it, or so it was widely accepted.

Gone was the spirit that motivated Sir Wilfrid Laurier, who fought so hard for equality of rights when the western provinces were being formed. It was replaced by acrimonious debates, such as those over conscription in 1917, 1942 and 1944, and the imposition of the 1982 Constitution over the will of all sides in Quebec's National Assembly.

Examples of forcing the majority's will on the minority abound and are not limited to Ottawa. The Quebec National Assembly has passed legislation aimed at promoting majority values at the expense of minority ones.

Honourable senators, Bill C-20 allows the majority to sit in judgment of a minority. A country cannot exist in harmony if minorities are meant to feel vulnerable, if not despised. The House of Commons always thinks in majorities. The Senate's equation has traditionally been based on equality, and it is in this light that Bill C-20 must be studied.

Ironically, this majority-minority approach was given parliamentary sanction when the Prime Minister himself, one who cringes at using a vocabulary associated with Quebec nationalism, moved in the House of Commons less than one month after the October 1995 referendum that "...the House recognize that Quebec is a distinct society within Canada." In his remarks, he said:

Once it is passed, this resolution will have an impact on how legislation is passed in the House of Commons. I remind Canadians that the legislative branch will be bound by this resolution, as will the executive branch.

The Prime Minister ended by saying:

It is easier to attack than to work together. It is easier to shout than to listen. It is easier to destroy than to build. It is easier, yes, but it is wrong for ourselves, for our children and for our country. The shouters, the attackers, the destroyers have had their say. Now Canadians want to get on with building Canada.

Honourable senators, is Bill C-20 what the Prime Minister was thinking of when he spoke about impact, working together, listening and building Canada? By no stretch of the imagination can his eloquence of less than five years ago be reconciled with the blunt instrument he is asking Parliament to place at his disposal.

Bill C-20 is, in fact, a rejection of the prime responsibility of every national government since Confederation — that is, keeping and enhancing the unity of the country. The federation has been called a reluctant partnership, and ever since 1867, the national government has had as its top priority a determination to solidify the partnership, despite the frustrations, disappointments and political setbacks that are too often the only reward for these efforts.

In his book entitled *A Brief History of Canada*, Roger E. Riendeau writes:

Confederation was effectively a marriage of economic and political convenience between partners who had little desire to live together but could not afford to live apart. The reluctance with which the British North American colonies entered into their national partnership foreshadowed the persistence of the regional and cultural discontent that would characterize Canada's development in the last third of 19th century and throughout the 20th century. Despite the precarious foundation of unity, Canada would manage not only to survive as an independent nation in the shadow of a mighty southern neighbour but also to fulfil the transcontinental ambitions expressed in its motto... "From Sea to Sea."

With Bill C-20, we are being asked to support the government in withdrawing from its responsibility of being the main unifying catalyst and, instead, allow it unilaterally to decide when it is appropriate to formally discuss secession.

This bill is, in effect, a not-too-subtle sanctioning of the power of disallowance found in the Constitution, not used since 1943 and rejected by virtually all constitutional scholars and others as being out of date and no longer worthy of being used.

• (1420)

Not only, however, is Bill C-20 giving the House of Commons the right to disallow a vote of a provincial legislature, even a unanimous one, but also it allows a majority popular vote in a referendum to be nullified. Even the framers of the British North America Act never dared to go that far.

Let us look for a moment at the power of disallowance contained in the Constitution Act, 1867. The late chief justice of the Supreme Court, Bora Laskin, termed the disallowance power as "dormant, if not entirely dead." In MacGregor Dawson's *The Government of Canada*, the usefulness of this power is described in relation to the Charter of Rights and Freedoms on the basis that "some of the main reasons that might have been adduced to activate the disallowance power before 1982 seem to have been largely dissipated by the Charter."

Again, Dean Hogg, on the power of disallowance, said:

Its use today would provoke intense resentment on the part of the provinces. If the federal objection to a provincial statute is that it is ultra vires or inconsistent with a federal law, the province may fairly insist that a court is the appropriate forum to determine the issue. If the federal objection to a provincial statute is that it is unwise, then the province may fairly reply that its voters should be left to determine the wisdom of the policies of the government which they have elected. In my view, the provincial case is unimpeachable: the modern development of the ideas of judicial review and democratic responsibility has left no room for the exercise of the federal power of disallowance.

William Estey, in his submission last week to the Senate committee studying the Nisga'a treaty, also spoke of what he called "the power of disallowance which was frequently used in the early years of Canada to prevent injustice". Now it is being introduced to allow injustice.

If all this does not impress my friends opposite, they should know that no less a constitutional authority than former prime minister Pierre Trudeau himself, in his book *Federalism and the French Canadians*, says clearly that both the federal powers of disallowance and reservation of provincial laws are "obsolete".

Whether we believe the federal power of disallowance to be dead or alive, Bill C-20 certainly resurrects it in another form. It gives the House of Commons the power to basically set aside or disallow a referendum question duly enacted by a provincial legislature and then disallow or ignore a referendum result based on that or another question.

The issue before us deserves better treatment than that given by the Leader of the Government in the Senate who found sport in ridiculing the leader of the Progressive Conservative Party for using the word "ambiguity", and, in a feeble effort at humour, saying that "ambiguity is the friend of the Parti Québécois." This revealed a complete lack of understanding on how Canada works — better ambiguity, flexibility, openness and patience than rigidity, inflexibility, imposition and eventual resignation, which is what Bill C-20 is all about.

**Some Hon. Senators:** Hear, hear!

**Senator Lynch-Staunton:** On the other hand, having gone this far, Bill C-20 would take on more credibility, gain wider acceptance, and certainly not lack for clarity were the questions acceptable to Parliament actually specified in it, as well as the definition of "clear majority." The only objection I can see to this proposal is based on interference. However, since the bill is one of interference anyway, to the point of disallowance, why not come clean and simply say, in words anyone can understand, that any province that wants to negotiate secession must first ask the following question and no other, and gain a specified percentage of favourable votes and nothing less.

**Some Hon. Senators:** Hear, hear!

**Senator Lynch-Staunton:** In November 1999, the Prime Minister quoted from the September 3, 1998 issue of *Le Devoir*, in which former Quebec premier Jacques Parizeau suggested that the question be: "Do you want Quebec to become a country?" The Prime Minister said, "I have no problem with a clear question like that." If the arch-federalist and the arch-separatist have found common ground, I for one lean to amending the bill to include the question they agree to.

As for a clear majority, I favour a minimum of two thirds of eligible voters. It is only fair for all parties to know ahead of time that the rules of a very dangerous game are deliberately made so strict that few would dare play it.

[Translation]

Those who object to clarifying the referendum question and establishing a clear majority will say provincial jurisdiction must be respected. I fully agree, but Bill C-20 ignores this.

Not only does it permit the rejection of a question adopted unanimously by a provincial legislature, but it permits the rejection of the results of a democratic vote. If this is not boldfaced meddling, nothing is.

This is why the Parliament of Canada, which has no interest in doing the groundwork for secession, would be better advised to confirm its disdain for such a possibility by formulating the only valid question and specifying what constitutes a clear majority in advance. On this basis, few will try their luck, unless it is obvious to all that reconciliation is out of the question and rupture inevitable. Then and only then should the question be put.

[English]

The bill also requires the following:

...an amendment to the Constitution of Canada would be required for any province to secede from Canada which in turn would require negotiations involving at least the governments of all of the provinces and the Government of Canada.



How naive can one get? Does the government really think that, having accepted by its own definition a clear answer to a clear question, the seceding province would wait for the months if not for the years it would take to complete negotiations before seeking international acceptance for what has been accepted by no less an authority than the Government of Canada itself?

Just think of the following: The House of Commons agrees that the question is clear. The House of Commons agrees, again to quote from the bill, that "there has been a clear expression of a will by a clear majority of the population of a province that the province cease to be part of Canada." Then what? Well, the province celebrates its independence and finds international recognition for it, the government starts an endless series of consultations which, involving so many with conflicting views and no fixed deadline, could easily take years to complete. Does the federal government really think that, during all this time, the province would continue carrying on as if it were a full member of the federation? Has the government ever thought of the chaos that would ensue as a result? To ask the question is to answer it.

Anyway, the Supreme Court did answer this question in the last paragraph of its opinion, when it stated:

Although there is no right, under the Constitution or international law, to unilateral secession, that is secession without negotiation, this does not rule out the possibility of an unconstitutional declaration of secession leading to a de facto secession. The ultimate success of such a secession would be dependent on recognition by the international community, which is likely to consider the legality and legitimacy of secession having regard to, amongst other facts, the conduct of Quebec and Canada, in determining whether to grant or withhold recognition.

Thus, de facto secession through a declaration of secession is a real possibility, especially following a successful victory for the Yes side in a referendum.

The naiveté of the bill is found throughout. It specifies that, as there is no right to unilateral secession, an amendment to the Constitution would be required to make it legal. In its unhelpful way, the court refused to pronounce itself "on the applicability of any particular constitutional procedure to effect secession unless and until sufficiently clear facts exist to squarely raise an issue for judicial determination." The court invokes what it calls "the usual rule of prudence in constitutional cases" to explain its refusal.

Constitutional experts appear to be divided as to which procedure is applicable between the 7-50 one and the unanimous one. What about Bill C-110, respecting constitutional amendments, which was given Royal Assent at the end of 1995? The bill was introduced by the Prime Minister as another of his post-referendum sops. In it, not only is Quebec's traditional veto restored, but it is extended to Ontario, British Columbia, two or

more of the Atlantic provinces that have at least 50 per cent of the population of all the Atlantic provinces, and two or more of the prairie provinces on the same basis, which in effect gives Alberta a veto also. Here is how the Prime Minister explained the bill. He said, in 1995, as reported at page 16973 of Hansard, that it:

...requires that the Government of Canada first obtain the consent of Quebec, Ontario and two provinces from both the western and Atlantic regions representing 50 per cent of the population of each of those two regions before proposing a constitutional amendment to Parliament.

• (1430)

The amending formulae in the Constitution are tailored to specific cases. As secession is not in the Constitution, the court has held that "each option" — that is amending option — "would require us to assume the existence of facts that, at this stage, are unknown."

Bill C-110 answers the question if the Prime Minister's explanation still holds, namely that the consent of at least six provinces, each with a veto, including Quebec, is required before any amendment is brought before Parliament, including that of secession.

Coincidentally, in his submission to the Senate committee studying Bill C-9, the Nisga'a bill, former justice Willard Estey pointed out the following:

The Canadian Constitution may be amended by the formula set forth in Part V of the *Constitution Act, 1982*. An amendment may be achieved only with some difficulty and upon a broad consensus of Canadian opinion. It is so defined to ensure stability in the most basic of Canadian institutions. The Nisga'a Constitution may be amended if 70% of those Nisga'a citizens voting in a referendum approve. This then supplants the amending formula in the Canadian Constitution...

I can only assume then, that the Constitutional Amendment Act, Bill C-110, also supplants the Constitution.

What is the result? A unilateral imposition of an unenforceable constitutional amending formula guaranteeing that no major changes to the Constitution are possible. Quebec, having decided to secede, never a signatory to the Constitution Act, 1982, will nonetheless be allowed to sit on both sides of the negotiating table as its determination to leave the federation is being discussed, and with a veto at hand at all times.

[Translation]

The long and the short of it is that this bill is just what many people — especially those whose favourite sport is Quebec-bashing — want, and just what a growing number, not the least of them Quebec's federalists, do not want.



When Daniel Johnson resigned as leader of the Liberal Party of Quebec, thousands of people across Canada urged Jean Charest to step into the breach in preparation for the November 1998 election. One of the first to encourage him in this direction was the Prime Minister of Canada himself. The March 12, 1998 issue of *Le Devoir* quotes the Prime Minister as saying:

Jean Charest believes firmly in Canada and in Quebec. He is an ally whether he is leading the Progressive Conservative Party or running for the leadership of the Liberal Party of Quebec.

One of the first to condemn Bill C-20 was that very ally, Mr. Charest.

[English]

Here is how Mr. Charest reacted to Bill C-20 as quoted in the November 30, 1999 *Globe and Mail*:

The polarization between Ottawa and Quebec has placed the Quebec Liberals in a serious dilemma. While the rest of the country was dealing with secession, the Quebec Liberals found it impossible to build a case for changes to the federation, Mr. Charest argued.

He acknowledged that it was difficult to concentrate on changing the federation while a separatist government was in power in Quebec. But he insisted that this is the issue Ottawa should be focusing on rather than the hard-line strategy toward Quebec known as Plan B.

But the bigger question for me and the bigger issue is this one: How do we, as Quebecers, assume our leadership within the federation? How do we make the country work rather than focussing on the break-up scenario, in other words, Plan A rather than Plan B?

That Mr. Bouchard should vent his spleen on Bill C-20 is to be expected, but that Mr. Charest, whose commitment to federalism is unquestioned, be put in such an awkward position that his chances of winning the next election may be seriously compromised, reminds one of the saying, "With friends like that, who needs enemies?"

Bill C-20 is based on the false assumption that Quebecers can be identified as either separatists or federalists, when in fact the

majority are deeply committed to Quebec without in the least reducing their attachment to Canada. What they seek is a greater role and greater control over the handling of their own affairs, a goal sought by many other provinces over the years, and still today. Bill C-20 will not draw the moderates closer to federalism per se, believe me, honourable senators.

The mover of Bill C-20 in this chamber happens to be from Nova Scotia which, by his own admission, he would prefer representing in the House of Commons rather than here. As he told us on Thursday in so many words, this place is in the end but the handmaiden of the other. His preoccupation with the possibility of secession is understandable, as Nova Scotia was never really satisfied when it joined the federation. In fact, the first attempt at secession was made in Nova Scotia.

The separation movement there came to a head in 1868. Although there was no referendum, 31,000 of the 48,000 electors in Nova Scotia signed a petition in favour of separation. As David Matas points out in an article in the fall 1995 edition of the *McGill Law Journal*:

There was no question at the time that the will of the people was on the point: a referendum against Confederation would have undoubtedly succeeded.

On top of all this, all but two of the 38 members of the Legislative Assembly voted in favour of the petition for separation, and 16 of the province's 19 members in the House of Commons signed the petition for separation. Was the petition clear? It certainly was. Honourable senators, allow me to read the prayer in the petition to show how categorical the feeling of a huge majority of Nova Scotians was at the time. It states, in part:

That there being no Statute of the Provincial Legislature confirming or ratifying the British North America Act, and it never having been consented to nor authorized by the people, nor the consent of the Province in any other manner testified, the preamble of the Act, reciting that this Province has expressed a desire to be Confederated with Canada and New-Brunswick is untrue, and when Your Majesty was led to believe that this province had expressed such a desire, a fraud and imposition was practised on Your Majesty.

Thus, here was a clear question on secession and a clear majority in favour of the clear question. If Bill C-20 had been in effect at the time, Canada would have gone down the slippery slope of negotiating Nova Scotia's breaking away from Canada.

What is more, had Bill C-20 been in effect in 1868, Senator Boudreau, the sponsor of the bill, would not be here waiting to run in the next election, waiting to take his place in the next Liberal cabinet. How dreams of greatness can be dashed by ill-advised and provocative legislation which is Bill C-20.

I wish now to quote from Donald Creighton's biography of Sir John A. Macdonald:

Yet, despite his troubles, he had no real doubts about Nova Scotia. He was conciliatory by instinct and long practice; but he had not the slightest intention of making compromises about the newly created Dominion of Canada. The object of Howe's mission to England was the repeal of the union so far as Nova Scotia was concerned. Macdonald refused to discuss such a subject officially. The only concessions that he ever considered making were small adjustments, chiefly financial, inside the unaltered frame of the union. He was willing to bargain about these, but about nothing more. There were those who argued that the best plan would be to persuade the Nova Scotians to give the new system "a fair trial", with the inevitable implication that if they continued to dislike the union at the end of the trial, they would be free to withdraw from it. "That, it seems to me," Macdonald wrote bluntly to Jonathan McCully, "would be giving up the whole question. The ground upon which the Unionists must stand is *that repeal is not even a matter of discussion.*"

**Some Hon. Senators:** Hear, hear!

**Senator Lynch-Staunton:** The ability to negotiate, to be flexible and, yes, to be sometimes ambiguous, has, since 1867, been the genius of the Canadian federation. This is lost to us with Bill C-20.

Parliament's role is at all times to take measures which not only do not jeopardize the unity of the country but, rather, enhance it. Bill C-20 opens the door to secession. It uses a questionable Supreme Court opinion giving respect to secession a legality sanctioned by the one body which should not be entertaining the subject, except to reject it without condition. Bill C-20 does not do that as presently worded. If for no other reason, it deserves to be rejected on this basis alone.

However, if what Senator Boudreau tells us is true, that this is the most important bill for Canada that we will consider in many years, then perhaps it is up to us in the Senate to ensure we are not dealing with a possibility of separation with half measures which I believe this bill, as presently written, represents.

If this government does not have the vision and the necessary policies to build Canada in the 21st century, then let us at least ensure that its negative and pessimistic approach to the future of Canada as represented by this bill is altered enough that no province will dare advance the issue of separation unless there is a fundamental breakdown in the functioning of this country.

Let us amend this bill — put clarity into this so-called clarity bill — so that the bar will be raised to such an extent that this bill, I hope, will never, ever be used.

• (1440)

I believe that if we must have a Bill C-20 — and I will never agree with the defeatist attitude of this government and agree that we need it — then let us insert right in the bill both the "specific and clear" question and the exact minimum majority support required before Parliament must deal with the results of the referendum.

Our role is to put obstacles in the way of those who want to break up the federation for reasons arising out of constant grievances that can easily be worked out rather than the legitimate ones that are insoluble within the present federal system.

Bill C-20 opens the possibility of secession at any time. My proposal would only allow it to be pursued when it is inevitable anyway. While I have amendments along the lines suggested, I will hold them back until a full discussion on the merits of these proposals has taken place.

This bill, this very important bill as the Leader the Government terms it, will be the legacy left behind by the current government — an administration that will be known for bringing in a bill, for the first and only time since 1867, that sets out a roadmap to secession, for the breaking up of the country.

This is truly a government lacking in vision, lacking in agenda for the future, especially when the Leader of the Government here points with pride to this secession bill.

Then, as I have suggested, let us amend it, so that secession will become virtually impossible. If we do not reject it, let us amend it so that secession becomes virtually impossible. This government can then forget about fighting past battles and get on with the job of governing — the job it was given by the electorate, and a job that it continuously fails to take up.

**Some Hon. Senators:** Hear, hear!

**Hon. Anne C. Cools:** Honourable senators, I wish to ask a question.

Senator Lynch-Staunton has told us that the first obligation of the national government, as with any government, is to maintain and uphold the union, the very existence of the political entity itself. Obviously Senator Lynch-Staunton has done substantial work on his speech and has put before the Senate a very thorough range of the history of Canada in respect of this matter.



The honourable senator told us that the Supreme Court of Canada has said that there is no constitutional authority for secession, that it is not countenanced by the BNA Act. In his research, has Senator Lynch-Staunton addressed this particular question I wish to put to him, a question that has caused me much disquiet for quite some time: If what we believe, as he says, is the case, where has the Government of Quebec derived its lawful constitutional authority, over the last many years, to promote and to spend the dollars of taxpayers on the issue of promoting the secession of Quebec and promoting the disunion of Canada?

I wonder if the senator addressed that particular question in his research. I understand it is a difficult question, one that makes giants into dwarfs and one around which there has been a fair amount of timidity. However, I have wondered for quite some time now if, as former Mr. Justice Estey told us, sections 91 and 92 form the total — 100 per cent I think his words were — powers of the government, both of Canada and the various provinces, where does the power of any provincial government come from to promote secession?

**Senator Lynch-Staunton:** Honourable senators, any government can promote the political option that it was put in power to promote, such as in the case of the Parti Québécois. There has been excessive use of tax dollars. There has been deliberate and open use of the Caisse de dépôt, for instance, to promote so-called Quebec priorities, which are not necessarily in the interests of all Canadians. There is a whole series of use of tax dollars like that.

Where does it get the authority? I suppose that in a democracy such excesses must be accepted, unless it can be proven that the use of the money is really aimed at the breakup of a country, which in this case has yet to be done. I deplore the use of taxpayers' money for the promotion of secession, but it is legally acceptable. Permissible, I assume so; whether it should continue, of course not.

**Senator Cools:** Honourable senators, I appreciate that answer from Senator Lynch-Staunton. I also understand the sensitivity and the delicacy of the matter. We are essentially hearing from the media, from all of the political persons and most players, that the Government of Quebec is right because it has done it. It has the power to do it because it took that power. Therefore, the Government of Quebec can use taxes to promote secession because it has been doing it and no one has really directed an alternative response at them. I know this is a position in which most people find themselves; I still find it very unsettling and very much improper.

My next question was to be the other half, but the honourable senator has answered the other half of my question in his remarks.

I have a minor question, and not a question of policy. The senator cited a particular case, I believe he said it was from 1916. Does the honourable senator have the name of that case?

**Senator Lynch-Staunton:** If I recall correctly, 1916 was in reference to regulation 17 in Ontario.

**Senator Cools:** The Honourable Senator Lynch-Staunton had been laying out the historical development in a systematic and chronological way. I saw that as such an important matter that perhaps the name of the case should be placed on the record.

**Senator Lynch-Staunton:** Honourable senators, I do not have it with me, but it was not Regulation 17. That was in 1912. In 1916, the Privy Council ruled the constitutional rights of French, and limited it to the courts and to the Quebec and federal Parliaments. It was a judgment of the judicial committee of the Privy Council.

**Senator Cools:** It was a decision of the Judicial Committee of the Privy Council, I see. When this bill gets to committee, perhaps a useful part of the committee's study would include a review of the development of the relationship of the powers between the central government and the provincial governments as they were substantially altered by the Judicial Committee of the Privy Council.

I am putting this on the record so that the record can show that it was the courts that fundamentally altered the Constitution of this country. The difference between those instances and these instances is that at the time that those events were taking place I believe Canadian constitutionalists condemned the actions of the Judicial Committee of the Privy Council in England. Whether it was the great constitutional giants, whether it was William P. Kennedy or any of these individuals to a person, including the late Frank R. Scott, to a scholar they all condemned the involvement of and the exercise of these powers by a court in a distant place in reducing the powers of the federal government and reallocating those powers to the provincial government.

If we were to move on in this subject matter, a very important question that the committee will need to study on this particular bill — because this issue is causing me enormous distress — is at what point in the development of the Constitution of Canada did those newly acquired provincial powers get converted into the powers to promote and now, by Bill C-20, to negotiate the disunion of Canada?

• (1450)

Once again, honourable senators, for the record I shall say that Canada is one and indivisible. Her Majesty's governments are one and indivisible.

**Hon. J. Bernard Boudreau (Leader of the Government):** Honourable senators, I have a brief question. I commend the Leader of the Opposition for a well-researched and ably delivered speech. The views, for the most part, were clear to me. I am sure they are honestly held and I respect the Honourable Leader of the Opposition for that and for the opinions he expresses. There was only one area where I was a little confused, and my hope is that he can help me with it.



As Senator Lynch-Staunton began his remarks, I understood that his very fundamental opposition to this bill would be based on his firm belief that under no circumstances should the Government of Canada entertain secession negotiations or discussions. If 95 per cent of the population of Quebec voted in favour of secession given a perfectly clear question and with a perfectly clear response, even under those circumstances, the honourable leader would believe as a matter of principle that the Government of Canada should not entertain any negotiations on secession.

Subsequent to that, there was mention of a figure. When the honourable senator referred to a level, he referred to two-thirds of eligible voters. Of course, the leader of his party has indicated a level of 50 per cent plus 1.

I think I know the answer to this, but I wanted to ask the question: What is the position of those three options I have just laid out as held by the Honourable Senator Lynch-Staunton and urged upon us?

**Senator Lynch-Staunton:** Honourable senators, I would prefer that we not discuss secession here. I would prefer to see a constitutional amendment disallowing secession, but that is impossible in the near future anyway.

If we must have the subject before us, let us make the rules so strict that we make secession impossible. In effect, we would tell the provinces that secession will only come about when every other avenue of negotiation, discussion, compromise and consensus has been exhausted. If the situation becomes so untenable and even insoluble that there is no other avenue, then there is no other alternative.

As for the level of two-thirds, that is a question of opinion. I throw out two-thirds because I think the bar must be very, very high. The question must be specific. I can think of no one, other than Mr. Parizeau and a few people in the péquiste government now, who would dare ask that question. They will certainly ask a lot of others, but no one there, realistic as they are, would ask the direct question. There is the answer. They know the mood of Quebec, which has not changed very much over the years. It goes in cycles. Right now, it is very comforting to federalists, but it should not be taken for granted.

If we are to play this very dangerous game of establishing rules of secession, which is not our responsibility, let us play hardball. Let us raise the bar so high that no one can get over it, unless a referendum becomes useless and a constitutional amendment meaningless because we have reached the stage where secession is inevitable anyway. It will take place other than through a referendum and legalities.

**Senator Boudreau:** I thank the honourable senator for that answer. If this situation ever arises — and we all hope and believe that it never will — there will be differing opinions on where the bar should be set.

I seemed to hear from the Honourable Leader of the Opposition that he had a fundamental, principled objection to the Government of Canada entertaining, under any circumstances, the notion of negotiating secession. That is quite different from a position which says that the bar should be very, very high. Does the honourable senator hold the view that under no circumstances should the Government of Canada entertain discussions on secession, regardless of the results?

**Senator Lynch-Staunton:** In my view, it is not up to the federal government even to entertain the notion that this country can be broken up.

**Some Hon. Senators:** Hear, hear!

**Senator Lynch-Staunton:** I quoted Sir John A. Macdonald at length because he set the bar. He said he would talk of many things but that this union is not dissoluble. That should be the motto of every government and has been, until this one. This government leans on the Supreme Court opinion, which is flawed, incomplete, contradictory and which says that under certain conditions which we will leave up to you to decide, secession can take place. Now we are faced with a bill that is vague, incomplete and contradictory.

**Senator Kinsella:** The government should not have brought it in.

**Senator Lynch-Staunton:** That is quite right; the government should not have introduced it. If they want to confirm their distaste for secession, they should say to those who preach it that these rules must be obeyed before they will even consider talking to the secessionists about it.

I would rather the government say, "As long as we are in power, we are not here to preside," and I am paraphrasing Dean Peter Hogg, "over the dissolution of the federation." It is a simple as that.

Honourable senators, this bill makes that option legal. The Supreme Court legitimized it. Now the government wants Parliament to make it legal. I think that is a recipe for disaster.

[Translation]

**Hon. Fernand Robichaud:** Honourable senators, the leader of the opposition tells us that the federal government must take a hard line and not consider the possibility of secession. It could therefore say that it would never agree to consider a referendum on this question in any province. Would you go that far?

**Senator Lynch-Staunton:** Honourable senators, if the wish is for Parliament to give an opinion on the secession question, it should set ground rules that are so stringent that nobody would be tempted to try their luck. It should spell out the question: If Quebec wants to be independent, let us insist that two thirds of eligible voters be in favour before any discussion can be held.

There ought not to be any discussion of secession in Parliament. We should be finding means to solidify the unity of this country. The notion of secession ought not to enter the picture at the federal government level until all other possibilities of keeping the province within the federation have been tried and explored without any positive results. Any discussion, negotiation, compromise or consensus ought not to take place until there is an awareness of the inevitability of the desire to separate. If a referendum is held without the conditions being known from the start, where are we headed? How can anyone envisage negotiating a constitutional amendment with a province for years, when it has already decided to separate and with a federation which can do nothing more, because its actions might lead to the breakup of the country? If Quebec decided to declare independence, what would happen to the Atlantic provinces, or to the western provinces, which would find themselves dominated by Ontario? This would inevitably lead to a very explosive situation.

Parliament has a responsibility to speak out categorically against secession. It should address the issue only when secession appears inevitable. Today, it should say a categorical no. By discussing the matter at this time and in the weeks to come, I imagine, we are going to make the people in Quebec who want secession very happy. We are going to play along with them. We are going to discuss conditions, amending formulas, formulas of what is to be included in the question, what is a majority. How can the Parliament of Canada spend weeks discussing such hypothetical questions, as if we had no other priorities? This is beyond me.

**Honourable Marcel Prud'homme:** Honourable senators, I hardly need say that I have listened most carefully to the speech of Senator Lynch-Staunton. I am always afraid of people who talk of impossibility, of indissolubility. It is a bit like Galileo, who knew very well that the earth revolved around the sun. He was condemned for this, but it was later realized that he was right. Indissolubility is of great concern to me. Despite what we want to see in Canada, many countries have become independent since 1945.

The Leader of the Opposition said he was considering proposing an amendment on a clear question. I do not even want to ask one. This is perhaps the only point on which I might agree with Senator Cools. I believe Canada is one and indivisible. Still, we must recognize its specificities, otherwise we will have problems. We already have problems, but we will have more. While preserving the country's unity, we must stop boasting all over the world about Canada if we cannot work to recognize its specificities.

• (1500)

The honourable senator said he would like a tough and clear question such as: "Do you want Quebec to become a country, yes or no?" I do not like such a question, but at least it is clear. We can have a relatively short debate, a conclusion and an agreement. The honourable senator alluded rather quickly to the

notion of "two thirds". This is debatable. Did he mean two thirds of the voters' list or two thirds of those who actually vote?

**Senator Lynch-Staunton:** Both.

**Senator Prud'homme:** Let me give you some statistics on voters in Montreal ridings. Did you know that 93.34 per cent of Quebecers voted at the last referendum? This is an exceptionally high percentage in the Western World. In some parts of certain ridings, such as D'Arcy-McGee, 99 per cent of voters voted, with almost 99.3 per cent of them voting no. It is their democratic right. Is this not enough for you? In the amendment he is considering, would he go so far as to say that all those who do not vote will, in any case, be included in the percentage? Is this what he really said?

**Senator Lynch-Staunton:** Yes, I did indeed say that a clear question ought to be included in the bill. Also, the minimum number of votes ought to be specified before the process goes any further. I suggest two-thirds of those eligible to vote, not of those who cast their votes. As the honourable senator said, in that case, there can perhaps be a 100 per cent rate. The minimum needs to be sufficiently high to ensure that the desire is clear-cut. In my opinion, 50 per cent or 51 per cent is not enough if what is at stake is the breakup of a country. Two-thirds would be the allowable minimum. If we get to that stage, I have no doubt that the participation rate will be far higher, and the results will reflect it.

**Senator Prud'homme:** Honourable senators, since the amendment has not been moved, can the honourable senator help us in our reflection? I dare not say it is his. After speaking about a clear question and the requirement of two-thirds of the votes, he says no more. Would he be prepared in his reflection to stop there, instead of adding one more difficulty that does not exist anywhere in the world? As for the two-thirds figure, ten per cent of people on a voters' list are not going to vote.

[English]

They count as if they had voted. You are not asking for 66.6 per cent. I know the honourable senator wants to make it difficult. I will stand still for the moment, but I should like to know if he is ready to reflect before he puts his amendment on that last part to Parliament. It does not seem to be tough enough. I like people to be tough when we are dealing with a country and when we know the consequences. I ask the honourable senator to reflect on that point.

**Senator Lynch-Staunton:** Honourable senators, if I deliberately did not read the amendments, it is because I am throwing them out as a topic for discussion only. I hope they will be discussed at committee stage, as well as the honourable senator's arguments and those of other senators.

[Translation]

We will decide whether to move amendments after discussions.



[English]

**Senator Cools:** Honourable senators, I had deferred to my leader, Senator Boudreau, but I was not finished.

In my question to Senator Lynch-Staunton, it occurred to me that, perhaps, I could have made it clearer for those who will read these debates. I was speaking to the historical developments of the Constitution Act while in the hands of the Judicial Committee of the Privy Council in England. On reflection, perhaps I should have described it as some of the historians have described it, namely, as the contest between Sir John A. Macdonald and Lord Watson. Lord Watson was the chairman of the Judicial Committee one of singular legal mind to whom was attributed the business of reconfiguring the Constitution of Canada.

My question to Senator Lynch-Staunton concerns precisely Bill C-20. As I said before, I was a supporter of former prime minister Trudeau, and I still am. In a 1991 speech about former chief justice Bora Laskin, Mr. Trudeau vigorously condemned what the Supreme Court of Canada did with the Patriation Reference back in 1980. If anyone were to read that speech, one could hear Mr. Trudeau's vigorous condemnation of what he described as the Supreme Court of Canada playing politics with the future of Canada. Mr. Trudeau made the point that, try as he did, he could not succeed in having a debate on the question of where the sovereignty of Canada rested.

My concern about Bill C-20 is that it is creating a legal scheme or legal regime which, essentially, will authorize the secession of a province through a bilateral negotiation and agreement between the Government of Canada and the government of that province. In this instance, as I said earlier, the opinion of the House of Commons is the opinion of the Government of Canada. If we are not careful, the entire question of secession will be reduced to a bilateral agreement and to a bilateral negotiation between the Government of Canada and the Government of Quebec, which is most improper.

• (1510)

My question to Senator Lynch-Staunton is the following: In reading Bill C-20, which I have read dozens of times, I noticed that it talks about the will of Quebec as expressed in a referendum of the population of Quebec. However, Bill C-20 is silent on the will of Canada as expressed, perhaps, in a national referendum of Canadians. Has the honourable senator given this matter any thought, or has he reviewed it in his research? A referendum could be held in Quebec, which, purportedly, may be binding on Canada if the House of Commons says so. The fact is the matter of the bill, which sets out this legal scheme, imposes no obligation whatsoever on the Government of Canada to consult the opinion of all of Canada by way of the same technique, called "a national referendum."

**Senator Lynch-Staunton:** Far be it from me to explain the bill, but I think the answer is that the House of Commons is

called upon to play a role in the preliminary stages in assessing the question. If the question is assessed as favourable, then the House will assess the answer. If it supports the answer, then it is out of the picture. What happens, as I read it, is that under clause 3(1) an amendment is necessary and all provinces and the Government of Canada must participate in the drafting of that amendment. That is what draws the rest of the country into the ultimate breakup of the country.

**Senator Cools:** Essentially, the committee will have to look at that question. What you are saying is that the bill lays out a method for much later, but Canadians are not consulted as to whether it should happen.

**Hon. Douglas Roche:** If the purpose of Senator Lynch-Staunton's speech was to show clearly that his opposition to the bill is principled, fundamental and does not rely on discussion of the Senate's role in the determination of clarity, since he hardly mentioned the word "Senate" in his address, then Senator Lynch-Staunton certainly succeeded. He made that clear. However, because the role of the Senate in participating in the deliberations on the establishment of clarity is controversial, would the senator give us his views on the manner in which the bill speaks about the role of the Senate? I am sure Senator Lynch-Staunton has strong views on this since he indicated earlier that this is a concern. Perhaps he is leaving this provision for another member of the caucus to address.

However, at this central moment in the debate, will Senator Lynch-Staunton give us his views on the Senate and also give us his view as to whether the bill is fixable by strengthening the role of the Senate in the determination of clarity?

**Senator Lynch-Staunton:** Yes. I did not refer to the Senate as such because others in the caucus will. I found the speech too long and there were many other things I would have liked to include in it. To speak just on the Senate alone would have taken me quite a few minutes.

Honourable senators, it is an insult to Parliament, not just to the Senate, to be excluded from the process, any parliamentary process. It is an insult to the parliamentary system, not to the Senate itself, to deliberately exclude an essential body to the system from any decision whatsoever where Parliament should be involved.

Senator Kinsella, in particular, will address that particular feature of the bill. I urge all senators to be here because he will set out very clearly how the Senate has been slighted, what its true role is and where we should be in this process.

**Hon. Herbert O. Sparrow:** Honourable senators, understand there are a number of reasons Senator Lynch-Staunton wishes to see the bill defeated. One sufficient reason, in his opinion, stated now, is because of the role of Parliament in the process.



My honourable friend has suggested certain amendments to the bill regarding majorities, et cetera, in a referendum and has discussed defeating the bill in its entirety.

Is the honourable senator suggesting that we make amendments to the legislation, and even if those amendments are passed, he would still vote against the bill as amended because he is opposed to the overall principle of the bill?

**Senator Lynch-Staunton:** If the amendments were along the line that I suggested, I would have many fewer problems in supporting the bill when it came to third reading. I would prefer that the bill not be before us. However, if we can pass a so-called secession bill where the rules of a very dangerous game are so difficult to apply that they are practically impossible, and if we can act deliberately as a signal to those who want to break up this country that we will not be part of the process, then I would be willing to support that kind of legislation.

**Hon. Joan Fraser:** Honourable senators, I have a question for Senator Lynch-Staunton. I am a little troubled by one thread of his argument and by some of the questions.

I believe one of the great glories of this country is that our Constitution does not say that Canada is indivisible, as does the French constitution and various other constitutions. It is one of the greatest qualities of this country that we do discuss these matters rather than fighting civil wars about them. I am troubled by the thread of my honourable friend's argument where he says we should not even talk about secession, and if ever it becomes impossible to avoid talking about it, we should play hardball. Am I right or wrong when I discern in that line of argument that Quebec, or any province for that matter — but his province, like my own, is Quebec — should not be allowed at all to secede from Canada?

**Senator Lynch-Staunton:** No. I tried to make clear that I do not think that Parliament should initiate a process whereby, if accepted through Bill C-20, it would tell a province under certain conditions that secession must be discussed. I am saying: Let the Parliament of Canada make it clear that the only time it will be involved in a secession discussion is when all other avenues of keeping that province in the federation have been explored and have been found wanting. Let us come in at the end, not start at the beginning.

On motion of Senator Hays, debate adjourned.

## BUSINESS OF THE SENATE

**Hon. Dan Hays (Deputy Leader of the Government):** As honourable senators know, this is a short day. There is one item further down on the Orders of the Day that I wish to ask leave to bring forward now. It is not government business. It is item No. 2 under the rubric Reports of Committees. It has to do with the fifth report of the Standing Senate Committee on Social Affairs, Science and Technology. It involves a question asked of Senator Kirby by Senator Lynch-Staunton about a condition that Senator

Lynch-Staunton wishes to see satisfied before we deal with this matter. Accordingly, I ask for leave to bring this item forward now.

**The Hon. the Speaker *pro tempore*:** Honourable senators, is leave granted?

**Hon. Noël A. Kinsella (Deputy Leader of the Opposition):** Honourable senators, I find it passing strange that something else is happening here that is more important in the mind of the Deputy Leader of the Government than government business. If that is his position, I have no objection.

**Senator Hays:** Honourable senators, I do not want to make a qualitative statement about the importance of any item on the Order Paper. Sometimes, at certain hours of the day, bearing in mind there is not time for many more or any more speeches, it is appropriate to deal in an orderly way with the business of the chamber. My suggestion is an attempt to do just that. However, I understand Senator Kinsella. If leave is not forthcoming, then we will proceed with the Orders of the Day.

**The Hon. the Speaker *pro tempore*:** Is leave granted, honourable senators?

**Hon. Senators:** Agreed.

## STATE OF HEALTH CARE SYSTEM

REPORT OF SOCIAL AFFAIRS, SCIENCE AND TECHNOLOGY  
COMMITTEE REQUESTING AUTHORIZATION TO ENGAGE SERVICES  
ADOPTED

On the Order:

Resuming debate on the motion of the Honourable Senator LeBreton, seconded by the Honourable Senator Nolin, for the adoption of the fifth report of the Standing Senate Committee on Social Affairs, Science and Technology (budget—study on the state of the health care system in Canada) presented in the Senate on February 29, 2000.—(*Honourable Senator Lynch-Staunton*).

**Hon. Michael Kirby:** Honourable senators, I rise to respond to a question that Senator Lynch-Staunton quite legitimately raised on March 2 with respect to the budget of the Social Affairs Committee in relation to the study of the federal role in the health care system.

• (1520)

In the question that Senator Lynch-Staunton would have addressed to me had I been in the chamber at the time, he referred to a newspaper article that suggested — and he was extremely careful in his remarks to make it clear that he did not endorse the insinuation — that because I happen to be on the board of directors of a long-term care company, it was open to question as to whether I was in a conflict of interest.

I will respond specifically to that question and also to another comment Senator Lynch-Staunton made, which was quite helpful on the issue. Until I saw that story in the newspaper, it had never occurred to me that this could be an issue. I happen to be on the board of directors of a company that is in the long-term care business. Long-term care is not funded by the federal government, is not subject to medicare, and is not subject to the Canada Health Act. Therefore, it had never occurred to me that anyone could see a potential conflict of interest in my position on the board. Indeed, I still do not understand this perception. As I mentioned, Senator Lynch-Staunton did not even suggest that there necessarily was a conflict.

However, having said that, given the fact that some people think that there could be a potential conflict, Senator Lynch-Staunton suggested, and I have taken up his suggestion, that perhaps the Social Affairs Committee should adopt the process that I put in place when I was chairman of the Banking Committee and we were dealing with financial services legislation. That process involved, originally, myself as chairman tabling a letter with the Law Clerk and Parliamentary Counsel of the Senate, Mr. Mark Audcent, outlining any business activities that I might have had with respect to financial institutions, because we were, at that time, considering the MacKay report. I urged all members of the Banking Committee to table a similar letter outlining any relationships they had with financial institutions, just so that there would be no question about any conflict of interest. If a senator did have an interest in a financial institution, it would be publicly declared, since the intent was to make these letters available, as indeed they were, to members of the media who sought them from the Law Clerk.

As it had not occurred to me that anyone could perceive a conflict in connection with the Social Affairs Committee, it never occurred to me to adopt the same process in this instance. Nevertheless, now that the issue has been raised, as soon as I read the transcript of Senator Lynch-Staunton's comments in the Senate I proceeded to do exactly what I did previously with the Banking Committee. I tabled a letter with the Law Clerk of the Senate. That is a public document. The letter explicitly tells the Law Clerk that he can make it public. I also wrote to all the members of my committee and urged them to write such a letter to the Law Clerk. Senator LeBreton has already done so, and I presume that other members of the committee will do so in the future.

As an aside, since I also sit on the Subcommittee on Communications of the Transport and Communications Committee, I did the same thing with respect to that subject, even though Senator Lynch-Staunton did not raise that matter.

Finally, every committee I have ever chaired has always attempted to reach a consensus on issues before the committee. Therefore, only on very rare occasions have those committees been forced into a vote. We have always attempted to reach a consensus solution. I am happy to state publicly that if, in the course of deliberations on health care, a committee that I am

chairing has to vote on an issue relating to long-term care or home care, I would abstain on the grounds that the company on whose board I sit is in that business. I hope that we are not forced into votes. It is my hope that the committee can develop consensus solutions. That has been the great strength of the Banking Committee over the years and I hope that it will become the strength of the Social Affairs Committee as well.

I believe that that responds to Senator Lynch-Staunton's question. I should like to thank him for giving me the opportunity to put that on the record because it had not occurred to me that this could be an issue in this case.

**Hon. Wilbert J. Keon:** Honourable senators, I have received Senator Kirby's letter and I am responding to it by disclosing all of my own pertinent information.

**Hon. John Lynch-Staunton (Leader of the Opposition):** Honourable senators, I wish to thank Senator Kirby for understanding the spirit in which my comments were made. It is important, in this institution in particular, that as full disclosure as possible is made. It is too bad that we do not have guidelines on this. I recall that some years ago there was an attempt made to establish such guidelines, and that should be revived. It would make everyone more comfortable. We have nothing to hide here. I understand that the proposition never occurred to Senator Kirby until he saw the article, and I understand his reaction. However, others who saw the article would interpret it in the wrong way. This has cleared the air and I wish him success in the difficult task upon which he has embarked with the Social Affairs Committee.

**Senator Kirby:** I thank Senator Lynch-Staunton for those comments. It was precisely the failure of the effort to establish a set of guidelines in this place several years ago that led me to take the ad hoc measure that I took with the Banking Committee.

I would hope that the Standing Committee on Privileges, Standing Rules and Orders would take it upon itself to, at the very least, adopt the process that I have followed on an ad hoc basis on two occasions; that is, simply as a matter of process, to have members of the committee table letters with the Law Clerk outlining outside interests they have with respect to the subject matter the committee of which they are a member is studying.

I agree with Senator Lynch-Staunton that that is the least we should do. I will write to Senator Austin, the chairman of that committee, about this. I hope that the committee will consider that.

**The Hon. the Speaker *pro tempore*:** Is it your pleasure, honourable senators, to adopt the motion?

**Hon. Senators:** Agreed.

Motion agreed to and report adopted.

The Senate adjourned until tomorrow at 2 p.m.



# CONTENTS

Wednesday, March 29, 2000

PAGE

PAGE

## ROUTINE PROCEEDINGS

### Nisga'a Final Agreement Bill (Bill C-9)

Report of Committee. Senator Austin ..... 872

### Civil Justice System

Notice of Motion to Establish Special Senate Committee.  
Senator Cools ..... 872

## QUESTION PERIOD

### National Defence

Rescue Operation at Sea—Condition of Fourth Sea King Helicopter  
Assigned to Task Force. Senator Forrestall ..... 873  
Senator Boudreau ..... 873

### Human Resources Development

Job Creation Programs—Possible Mismanagement of Funds—  
Request for Inquiry. Senator Angus ..... 873  
Senator Boudreau ..... 874

### Agriculture and Agri-Food

Effect of High Fuel Costs on Farm Community.  
Senator Gustafson ..... 875  
Senator Boudreau ..... 875

## ORDERS OF THE DAY

### Business of the Senate

Senator Hays ..... 876

### Appropriation Bill No. 4, 1999-2000 (Bill C-29)

Third Reading. Senator Cools ..... 876

### Appropriation Bill No. 1, 2000-01 (Bill C-30)

Third Reading. Senator Cools ..... 876

### Bill to Give Effect to the Requirement for Clarity as Set Out in the Opinion of the Supreme Court of Canada in the Quebec Secession Reference (Bill C-20)

Second Reading—Debate Continued.  
Senator Lynch-Staunton ..... 876  
Senator Cools ..... 882  
Senator Boudreau ..... 883  
Senator Robichaud ..... 884  
Senator Prud'homme ..... 885  
Senator Roche ..... 886  
Senator Sparrow ..... 886  
Senator Fraser ..... 887

### Business of the Senate

Senator Hays ..... 887  
Senator Kinsella ..... 887

### State of Health Care System

Report of Social Affairs, Science and Technology Committee  
Requesting Authorization to Engage Services Adopted.  
Senator Kirby ..... 887  
Senator Keon ..... 888  
Senator Lynch-Staunton ..... 888









*If undelivered, return COVER ONLY to:*  
Public Works and Government Services Canada —  
Publishing  
45 Sacré-Coeur Boulevard,  
Hull, Québec, Canada K1A 0S9





CANADA

# Debates of the Senate

---

2nd SESSION • 36th PARLIAMENT • VOLUME 138 • NUMBER 41

---

OFFICIAL REPORT  
(HANSARD)

Thursday, March 30, 2000

—  
THE HONOURABLE GILDAS L. MOLGAT  
SPEAKER



## CONTENTS

(Daily index of proceedings appears at back of this issue.)

## OFFICIAL REPORT

### CORRECTION

**Hon. John Lynch-Staunton (Leader of the Opposition):** Honourable senators, I believe this is the appropriate time to ask for a correction to the Hansard of yesterday for which I only blame myself. I did look at the blues but this was allowed to slip by and I apologize. I take advantage of this opportunity to thank the reporters, the translators and the editors of Hansard for the outstanding job they do. The correction is of my making, not of theirs. It is on page 877 of the March 29 *Debates of the Senate*. It reads:

This government has yet to properly explain why it rejects what has seldom been rejected by all its predecessors.

It should read:

This government has yet to properly explain why it rejects what has never been respected by all its predecessors.

## THE SENATE

Thursday, March 30, 2000

The Senate met at 2:00 p.m., the Speaker in the Chair.

Prayers.

### THE HONOURABLE RON GHITTER, Q.C.

#### TRIBUTES ON DEPARTURE

#### **Hon. John Lynch-Staunton (Leader of the Opposition):**

Honourable senators, while it is never a pleasant task to bid farewell to a colleague who has reached the mandatory retirement age, at least all can prepare for that inevitability. However, when a colleague decides to leave this place voluntarily, and with little warning, the loss is felt even more deeply. This could not be truer than in the case of Senator Ghitter, whose resignation takes effect tomorrow.

I first met Ron in 1976, when we were both active in supporting the same candidate for the leadership of our party. I was struck then by his enthusiasm and dedication — qualities which, among many others, have benefited Parliament for the last seven years, practically to the day, as he was appointed on March 25, 1993.

Ron Ghitter brought with him experience and knowledge in law, in business and in politics as a former member of the Legislative Assembly of Alberta. Not least, he brought here an intense commitment to human rights, which has been marked by prestigious awards from the Canadian Council of Christians and Jews and from the Alberta Human Rights Commission.

Ron's contribution to the Senate has been recognized by all sides because of his clearness of thought and forceful argumentation. His committee participation was highlighted by a most productive and effective term as chairman of the Standing Senate Committee on Energy, the Environment and Natural Resources.

Ron has been particularly valuable in caucus, and all his colleagues will miss his thoughtful interventions. I will miss his loyalty and support. Even when there was disagreement, his commitment to the leadership and to his colleagues always came first. More than one commentator in Alberta has recognized Ron's qualities and urged that they not be forgotten as a successor is being decided upon, confirmation that the stature and merit of our colleague is appreciated even in that province, which is the most critical of the Senate as an institution.

Honourable senators, I cannot end without mentioning Ron's wife, Myrna, who is in the gallery and has been so supportive of his Senate activities. I thank her for sharing Ron with us. While we deplore his decision and accept it reluctantly, we understand.

Thank you, Ron, for the last seven years. May you and Myrna have many happy and active years together. As you prepare to leave here, know that you do so with much appreciation and a great deal of affection.

#### **Hon. Dan Hays (Deputy Leader of the Government):**

Honourable senators, a statesman is one who can work for long-term goals that eventually suit situations as yet unforeseen. To me, this is exactly what my friend and colleague at the Alberta bar, Senator Ron Ghitter, did both in his public and his private life, and it is what he has come to represent.

Senator Ghitter became who he is today through his many successful endeavours. He has achieved respect among lawyers in Alberta for his expertise, in particular, in the area of land law and community planning.

Honourable senators, Senator Ghitter never allowed his professional or business best interests to obscure his humanitarian concerns. He is well respected because of his noteworthy work in human rights, as Senator Lynch-Staunton has noted. His efforts in this area have earned him a number of awards and accolades, as was also noted, including the Alberta Human Rights Award. Senator Ghitter's principles are more important to him than politics. I remember his work with the Dignity Foundation, which he founded. From time to time, that work placed him in conflict with some of his former colleagues from the Progressive Conservative caucus.

I suppose, honourable senators, that we all remember working with Senator Ghitter in his role as a politician, and a successful one. He was elected to the Alberta legislature twice, establishing himself as such a good MLA that he made a credible bid to become the leader of his party.

● (1410)

Senator Ghitter combined his diverse skills into a powerful package in this place. He was always effective in his committee work. I suppose that those of us on this side often thought too much so. I think back to his time as chairman of the Standing Senate Committee on Energy, the Environment and Natural Resources and the rough ride we got on the CEPA bill. Senator Ghitter did his job well, proving his political acumen by rankling a good number of Liberals and along the way joining Senator Spivak in establishing his "green" credentials.



When Senator Ghitter announced his retirement to us and to Albertans a short while ago, the impact was felt by my province. The *Calgary Herald* said how much Senator Ghitter will be missed and how we can all respect his decision to leave to pursue other endeavours. Senator Ghitter's compassion, skill, prudence and balance are qualities that are becoming all too rare in the public life of our home province. Those who attack these notions do so not because they have any justification — in fact, it is quite the opposite. They are the harbingers of a new, more crass era of politics, one that Senator Ghitter fought against and one that proves Senator Ghitter's statesmanship, because his career had the unforeseen consequence of seeing him be a fierce adversary but, at one and the same time, a courteous one, something that newer politicians in many of our provinces do not understand.

Senator Ghitter, it is a tribute to you that your province will miss you in public life, and, more important, that your departure signifies the loss of an important and valued contribution to the better governance of Canada.

Honourable senators, I stand to say thank you to my colleague for all that he has done and all that he represents. I join Senator Lynch-Staunton in thanking Myrna as well for her patience and forbearance in letting Ron make this very important contribution to public life.

**Hon. Norman K. Atkins:** Honourable senators, I should like to add to the tributes to my good friend Senator Ghitter. As you may imagine, this is not a happy day for either myself or my colleagues on this side of the Senate. I would even go further and venture to say that this is a day when the Senate itself loses one of its most valued and able members.

My colleagues will recount Senator Ghitter's accomplishments here, in private life and in the Alberta legislature, so I need not dwell on them to a great extent.

I wish to deal with two aspects of my friend's character and makeup that I will miss the most: Senator Ghitter's value to our caucus and his courage to speak out on matters in which he deeply believes.

As the chairman of the Progressive Conservative Senate caucus, I could always count on Senator Ghitter to bring whatever issues were before us into a clearer light. He was able to explain matters and his position on issues in words we could all understand and in most cases support.

Senator Ghitter is an interesting contrast — a strong advocate for the rights of minorities, especially the less fortunate in our society, while at the same time believing in a compassionate form of fiscal conservatism. This split in his thinking and personality makes him a valuable contributor to legislative and policy discussions. Sometimes tough issues were simply given to him to reflect upon so we would have the benefit of the views coming from this split personality. When these views were expressed, we really did not have to go further to seek other

views. All options would have been canvassed by Ron before giving us the benefit of his wisdom.

Senator Ghitter was one I believed I could look to, as chairman, to help both open and close a caucus debate. His courage to speak out on issues that may have seemed to be unpopular at the time was best exemplified when he spoke out in the midst of Premier Klein's cost-cutting in a series of lectures and town hall meetings entitled "Keeping the Spirit Alive," during which he would deliver an address entitled "The Alberta Advantage — For Whom?"

These lectures questioned the speed and depth of the Alberta government's cuts and their effect on the most vulnerable portions of Alberta's society. It was Senator Ghitter's belief that those on welfare, those with low-paying jobs, those needing rent-to-income housing and the elderly and the sick were paying an extraordinarily high price for the excesses of previous administrations.

I should like to quote from one of these lectures given by Senator Ghitter because I believe it epitomizes his philosophy of government and the reasons why we will miss him so much in this place.

It is always the challenge of good government to find and maintain the balance, a difficult thing to achieve in times of great change. But it will always be the responsibility of democratic government to do so — that at least will never change. Government must somehow also find the courage to balance its brief present against the weight of the future, to do what it can and must do so that all, not just the privileged few, may share the opportunities it holds.

Honourable senators, history will record that government policies in Alberta changed to move in the direction of helping those who once they hurt. This is no doubt due to timely interventions such as Senator Ghitter's.

Ron, I will miss you, your counsel, your humour, your pivotal role in our caucus, our dinners and our trips. I wish you and Myrna all the best, as you set out to find new worlds to conquer.

**Hon. Joyce Fairbairn:** Honourable senators, I should like to send my friend and colleague Senator Ghitter off today with congratulations for seven years of active service in this institution and assurances that his passion for human causes and his words of concern for the future of this institution will be remembered.

Senator Ghitter and I are friends, even though we have squared off on different sides of political battles for a long time. We have been friends since the 1950s, when we were students at the University of Alberta — he an aspiring lawyer and myself an aspiring journalist. He was tremendously involved in campus life. Ron was a lot of fun, still is, and we have stayed in touch over these many years, not just because of the pull of politics but also because of other issues of mutual interest.

As others have said, and I wish to underline, that in the province of Alberta the name "Ron Ghitter" is synonymous with care and advocacy for the human and civil rights of all citizens — particularly those most vulnerable — be it issues concerning race, or gender, or sexual orientation, and the discrimination which follows that issue, violence in the community against women and children, or equality before the law. Senator Ghitter has spoken out eloquently in some of the most difficult of situations, when at times the easier course, personally or politically, might have been to remain silent.

Most recently, Senator Ghitter founded and co-chaired a human rights advocacy group called the Dignity Foundation in Alberta. For all of this, he not only has endured spirited criticism over the years, but also received, as other colleagues have noted, great admiration and acknowledgement through awards from prestigious and well-respected organizations such as the Canadian Council of Christians and Jews and the Alberta Human Rights Commission.

In political life, Senator Ghitter served two terms in the Legislative Assembly of Alberta in the 1970s. At one point, former premier Peter Lougheed had such an overwhelming majority of members that he selected a small group of them to serve as informal devil's advocates to his government. Ron, of course, was one of those. Sometimes they did such a good job that they were viewed with interest by those of other political persuasions, but not always by their own colleagues. It took a lot of courage and spunk to fulfill that responsibility, and I always liked Ron for doing it.

• (1420)

He ran for the leadership of his party following Mr. Lougheed's departure. When that fell short, he went on to concentrate on law and business and the vibrant life of his beloved city of Calgary. The health of the Progressive Conservative Party, both provincially and nationally, has never ceased to be a major preoccupation for our colleague, and I know it will continue to be so as long as he draws breath on this planet.

As an adversary, he is eloquent and smart and full of good cheer on the outside, but behind the scenes he is one of the toughest hombres that anyone could face. In spite of the battles, I have no doubt whatsoever that his goal always is for the greatest opportunities for the citizens of his city, of his province, and of his country.

Here in the Senate, he combined his interest and his experience to serve on the committees which have been mentioned: the Standing Senate Committee on Legal and Constitutional Affairs, the Standing Committee on Privileges, Standing Rules and Orders, and the Standing Senate Committee on Energy, the Environment and Natural Resources, where he was chair for three years from 1996 to 1999.

He came to care about the Senate, but he has deep concerns about its viability in its present form, concerns which he expressed in a very fine speech in February of 1998. He

challenged all of us to work together constructively for change, both constitutional change and internal change. I read that speech again this morning, and I agree with much of it. I hope that we who remain may have the will to create the opportunity to push that kind of agenda for change forward in the months and years ahead.

Now Ron heads back to re-energize a new phase of his life. He has a long way to go in the city that he loves with the woman that he loves, Myrna. I should tell you, colleagues, that Ron and Myrna are a very active and popular team in their community. I wish them good times and happiness for many more years together.

I know, Ron, that you will always be in the forefront of the regrettably endless battle for equality of rights of Canadians, wherever they live. You have been an asset to the Senate, and I look forward a great deal to working with you on some of those causes and always continuing our friendship.

**Hon. W. David Angus:** Honourable senators, I should like to add a word of respect and friendship to the wonderful words that have already been said by honourable senators about Ron Ghitter.

I first met Ron in the fall of 1975 in Calgary, and there ensued a period of some months when we worked together in the first leadership campaign of the Right Honourable Brian Mulroney. I came to know Ron then as a man of great talent, integrity, and sound judgment. I found him to be not only a witty individual but also someone who could always be counted on in a tight squeeze and in any circumstances.

From 1976 until 1993, although we had occasional communications, we did not see much of each other. It was not until we were fortunate enough to be summoned to this place in 1993 that we met up again. The friendship we felt instantly rekindled itself to the point where I must share with you, honourable senators, that the saddest day for me since I came to this chamber was when I received Ron's letter of February 17 saying that he would be resigning as of tomorrow and would no longer be with us. I confess to a moistening of the eyes. I went to see Ron, but I failed in my most sincere efforts to get him to change his mind. It will be hard to get along without you, Ron.

Ron came here in March of 1993, and I came here in June of that same year. I happened to meet Ron in the Ottawa Convention Centre one afternoon. I was to be sworn in the next day. I expressed some concerns about the image of the Senate as it was, at that particular time, in the midst of some terrible publicity. I said to Ron, "What about it?" He said, "Let me walk you around." There ensued a four-hour tour of this city and the Senate, its appurtenances and various manifestations, and everything he said was positive. He said that the Senate was under attack, but it was a very worthy institution where wonderful work can, should and would be done if we all pull together for the betterment of all Canadian people. Since that day, I have not for a moment questioned Ron's judgment in that regard. Any doubts I had about wanting to be here dissipated.



Whenever I have had a problem or wondered about something that may not be quite in line with the way my little world should be, I have gone to Ron and asked for his balanced view and his judgment. He has never let me down. As Senator Fairbairn said, yes, he is a tough hombre, but he calls a spade a spade. You know when he looks you in the eye with that little grin that you are getting the straight poop. I cannot think of a more wonderful colleague, a more loyal friend, or a more sincere individual to have as a friend and colleague in this place.

Ron and Myrna have already been kind enough to have invited us to their lovely home in Calgary. His letter does say, as I reread it again today: "If your travels ever take you to Calgary and you have a spare moment, please know that Myrna and I will always have the welcome mat out." I want you to know that I will be taking you up on that sooner than you think.

I will really miss you, Ron, and I hope that all goes well in your future endeavours. To both of you, Godspeed and good luck.

**Hon. Ethel Cochrane:** Honourable senators, I should like to join my colleagues in wishing a reluctant but fond farewell to Senator Ghitter. He has been a valued and highly respected member of our caucus. As you know, he has served with distinction in these years as chairman of the Standing Senate Committee on Energy, the Environment and Natural Resources. I have admired Senator Ghitter's sincerity and honesty. I have also appreciated the energy, the diligence, and the thoroughness that he brought to all of his duties as a senator, and particularly to his work as chairman of the committee. Senator Ghitter's effort and enthusiasm, as well as his friendly and gentlemanly demeanour, contributed significantly to the success of our committee's work during his tenure as chairman.

I regret that our caucus is losing the services of one of its most effective members, but I wish Senator Ghitter all the best in his future pursuits.

**Hon. Nicholas W. Taylor:** Honourable senators, it is with mixed feelings that I rise today. Ron and I go back many, many years. We have always been political opponents, but friends.

Many people have said today, "Whenever I had a problem, I could go to Ron."

• (1430)

My dilemma was different. Whenever I had a problem, the last person I wanted to see was Ron. He was a very formidable opponent who knew how to exploit any weakness I had in an argument.

I sat next to Senator Ghitter when he chaired the Environment Committee. I was always pleased when I was able to anticipate

one of his masterful manoeuvres, though I was not often able to do so. He is a tactician of many moves.

I first remember Ron as one of the best tennis players in Alberta. He was a tennis professional for The Glencoe Club. He was famous for driving a ball so that it landed barely inside the line. He was the same in politics, firing shots that would land just inside the line. One could not get him on a point of order.

I say mostly nice words about Senator Ghitter because earlier today, I agreed to be his prime roaster at a fundraiser for the Conservative Party in Edmonton. That is something I am looking forward to with a little bit of glee. I hope all honourable senators will buy tickets. It will be an entirely different speech from the one I am giving today.

Ron and I cemented our friendship in the last few years. We used to commute back and forth from Calgary in the good old days when there were two airlines serving this country. One had a hope of a good seat on the airline and to travel when desired. At times I would have to sneak on to the plane and pretend I had just run into him because he was always a model of sartorial splendour. If I was not wearing the right colour to match my suit, my wife would always say, "Why do you not dress like Ron Ghitter? He always looks perfect."

Honourable senators, Ron Ghitter has been a great example to me in politics and also in private life. He has kept his quick wit and the reputation he earned in fighting for minorities.

I remember that Premier Lougheed went out of his way to appoint Ron Ghitter to take my post, in a way, because as leader of the Liberal Party I could not get into the legislature to do the fighting. To that extent, I appreciate him. However, he was so good at it that I probably was the only political leader in the country who had to put down a revolt because they wanted to get someone from the opposite party to take over my party. There was no question that Ron was that effective.

Honourable senators, Senator Ghitter brought that effectiveness into this chamber. Lately, he has been fighting for the Senate. In particular, he is involved in lawsuits in Calgary with that party on the other side in the other place, which we will see more of, I am sure, as time goes on. We read a lot about that party in the newspapers these days.

Ron Ghitter is a rare type of politician. We often hear about the markets, globalization and the bottom line. Ron is a politician who says that those factors are just one side of the ledger sheet. The important side of the ledger involves the human condition, civilization and society in general.

With that, Ron, I take my hat off to you. We will miss you here because you have been an adornment. God bless and good luck.

**Hon. Terry Stratton:** Honourable senators, this is not one of the better days for me in the Senate. Those who have spoken before me have said all that can possibly be said about Senator Ghitter's capability and intelligence.



I will speak from a more personal point of view. I realized that eventually I would have to do this one day; I just thought it would be later rather than sooner because he is so much older than I. I was hoping it would be 10 years from now.

Why does a man retire early? Senator Ghitter is 10 years ahead of time. Why is he leaving? Is he looking over his shoulder and not liking what is catching up to him? As with us all, is it that same old guy who will eventually catch us all? Could it be that he does not love us or like us any more? Could it be — and this is the reason, I think — he is turning 65 on August 22 and he can get his Senate pension, his CPP or his OAS? He may even qualify for GIS, for all I know. That is why I think he is retiring, to get a shot at four pensions.

For the information of those senators who have been appointed more recently and to refresh the memories of those who came before Senator Ghitter and I, we were appointed on the same day — March 25 of 1993. Another coincidence is that at that time we received the phone call, each of us was threatened with bankruptcy by certain individuals who will go unnamed, but we are still here. As well, each of us was marched over to the 9th floor of Victoria Building, looking out over Wellington Street and across to this wonderful Hill. We were given offices side by side. They are small, but they have a wonderful view. The last coincidence is that we became friends. An old partner of mine told me not to use the word “friend” too loosely. He said that as one goes through life, one has many individuals who are acquaintances, but one has very few friends. Even though we are parting and even though we may not see each other or talk for long periods of time, we will remain friends.

I will not tell Ron how wonderful, generous, intelligent and handsome he is because that has already been done. I take some issue with the handsome comments, however.

Senator Ghitter's contributions to this chamber have been enormous.

Ron has a wonderful wife in Myrna. How fortunate he is to have her.

I shall miss sharing whiskey before dinner. I shall miss him tremendously.

My Irish Presbyterian background tells me that I should not speak for too long, so I will not say anything about how good or wonderful he is because I do not like doing that.

Good-bye, Ron. May the road rise to meet you and may the wind be always at your back.

**Hon. David Tkachuk:** Honourable senators, I shall not be long, either.

I am actually kind of happy that Ron is leaving. The reason for that is because I think he is happy he is going. I will not miss him as a friend because he is my friend and I do not live that far away from him. I will see a lot of him in Calgary. The only thing that disappoints me is that I could see him here, so I did not have to make time for him in Calgary. Now I will have to do that.

I am a little upset at Ron. I do not know whether he realized this fact after he wrote his letter of resignation and then it was too late, but today he will make some Liberal in Alberta very happy. What is even more upsetting is not only will he make a Liberal happy, but the Liberal will not feel any guilt because Ron is still alive. That is a wonderful thing.

• (1440)

As I said, honourable senators, I will not miss Ron because I will still see him. I know that the party will not miss him. In fact, this is a happy day for the party because he can now be more involved in it. To any Liberals in Alberta who are listening I would say: You had better watch out because he will have a lot more time for you now.

Obviously, Myrna will not miss him because he will be home more often. That is good for Myrna; and what is good for Myrna is good for Ron.

We will miss you here and we will miss you in our caucus. We will miss your advice. Most of all, in this place, we will miss your dignity. You are just a class guy. I want to wish you good luck. I am sure we will see each other in Calgary, and perhaps we can have lunch together in one of those nice little restaurants. The Senate will miss you.

**Hon. J. Michael Forrestall:** Honourable senators, I want to thank Myrna for many things over the years. Marilyn also sends her appreciation.

For those of you who were wondering, as was Senator Stratton, why Senator Ghitter would quit at age 65, I can tell you that secret. It is his undying ambition to shoot his age in golf before he leaves this world. I hope he manages to do that, and I hope it is a 71. We will track that record. That should happen at about the time I leave the Senate. Thank you for being a colleague and a friend. Good luck.

**Hon. Douglas Roche:** Honourable senators, my tribute to my fellow Albertan Ron Ghitter, though brief — because everything I wanted to say about him has been said already — is heartfelt.

Ron Ghitter has been an ideal senator. I looked up to him long before I entered this chamber. He has brought to the Senate a vision for Alberta and for Canada, a deep understanding of the political process, and a drive to extend human rights for all. His contribution to the well-being of our whole society should live long after his departure.

Let us hope that the political legacy of Senator Ron Ghitter will be a beacon for his successor, a successor who I hope will bring to the Senate the desires of many Albertans for a progressive, caring, and compassionate society. I hope his successor will stand up for human rights to be fully enjoyed by all who are now marginalized. May his successor understand intuitively that Alberta and Canada, in the 21st century, in order to thrive and prosper, must be fully engaged with a world of dynamic change.

Those are the values of Ron Ghitter that I salute today.

**Hon. Lois M. Wilson:** Honourable senators, I have only interacted with Ron Ghitter about four times since I came to the Senate, mainly on the Environment Committee, but it was enough to show the measure of the man. I simply want to say I am impressed by his integrity and persistence. These qualities are very much needed by the human community.

I congratulate you on those qualities, Ron, and I wish you well.

**Hon. Gerry St. Germain:** Honourable senators, Senator Ron Ghitter has brought political balance to my life. A Liberal senator who spoke earlier mentioned that there were moments of confrontation within our own caucus on political viewpoints. In that environment, I grew not only to respect Ron but to really like him. You are one of the most decent guys I have ever met.

Those of us from the far West will really miss you.

**Hon. Ron Ghitter:** Honourable senators —

**Hon. Senators:** Hear, hear!

**Senator Ghitter:** May I say that you have all been so wonderful in your remarks this afternoon that I have changed my mind and I will stay.

**Hon. Senators:** Hear, hear!

**Senator Ghitter:** I guess it is too late for that. I will have to carry on. Thank you, honourable senators, for your generous and warm remarks.

Over the years that have I been privileged to sit in the Senate of Canada, I have often suggested that tributes to those retiring should be brief and limited. That was, of course, until today. How often your perspective changes when you are the target of the tributes.

It is not often, as friends who know me well will attest, that I am left speechless. It happened when I married my dear Myrna; it happened at my daughter's wedding; and I have the same feelings today. Before we pass on to the next order of business, I find the "speechless" part is over and I have some comments to make as I rise for the last time in this place.

As I look back on the past seven years, in many ways I have become a very different individual from the person who entered this chamber with Senator Stratton in March of 1993. I have seen the magnitude and the diversity of this country through the eyes of many wiser than I who dwell in this house. I have travelled to areas of this great nation which were only names on the map to me. I have experienced politics in the big leagues here in Ottawa, far different from the narrower confines of a provincial legislature.

I have changed my views on many things, such as the election of senators. When I came here, I thought that was a good idea. I no longer think that. I have never toted a gun in my life, but I found myself speaking against gun control legislation and I still do. I have spoken on reform of the House of Commons and even, thanks to Senator Spivak, I am now an environmentalist. God help me. That is what happens in this world.

In the Senate, I have experienced the lows one has from time to time when facing the necessity of starting a defamation action stemming from comments made about me in this institution, and the highs of many friendships that I have been blessed to make while being here. As my fellow senators from Alberta can attest and as Senator Fairbairn alluded to in her generous comments, being a senator from that great province is a challenging and often bittersweet experience.

Leaving all partisanship aside, I am very proud to be associated with Senators Fairbairn, Hays, Taylor, Chalifoux, Roche and, of course, the retired Senator Forest, all of whom I very much admire and who represent our province so very well. I am also very proud to have been a member of the Senate. I recall the first speech I made in this place when we sat on that side of this chamber, a much more pleasant side on which to sit. I wish we were there again, and one day we will be. I have to say that in all partisanship.

I remember making my first speech. I was terribly nervous. I remember Senator Frith rising very graciously and, with great courtesy, suggesting that, if I would only slow down, he could keep up with what I was saying. He could hear it, but he could not understand what I was saying because I was speaking so fast.

I recall, shortly after that, my wedding night to my wonderful, non-political Myrna. I had to leave early the next morning to catch a plane. My presence was demanded here due to the debate and vote on the infamous \$6,000 raise. As a result, I left the hotel room that morning and, oddly enough, who was to take our suite at the Westin Hotel in Calgary but Kim Campbell who was coming through that day. That was my wife's first lesson on the life of a politician and how we must live when we are involved in politics. Bless her for understanding.

I recall the intense work and debates on such important issues in this chamber as Pearson airport, gun control, MMT, reform of the Senate, even the absent Senator Thompson, and the Environmental Protection Act, amongst many others.



Above all my many experiences here, some of which I enjoyed and some of which I did not, I have learned to respect the members of the Senate of Canada, their work, their commitment to their country, and their recognition of their constitutional responsibilities. Yes, we need reform, just as the other place needs reform. However, in my view, and I state it wherever I go and will continue to do so, the continued existence of the Senate of Canada is essential to maintain the balance required in a nation as geographically diverse as Canada, and to provide that second consideration of bills and programs away from the heated political rhetoric and posturing of the other place.

• (1450)

There is no doubt in my mind that we must have a Senate — and I do not mean an elected Senate. I have expressed my views on that topic from this seat and in many other locations numerous times. We need experienced, wise and dedicated Canadians like those who are here today to come to this place to share their wisdom and their intelligence in a cool, detached and, preferably, non-partisan manner to provide balanced regional representation.

What is missing is that Canadians often do not understand the value of this place that, too frequently, becomes a media whipping post on a slow news day. Thus, it is our responsibility — and one I will continue to speak to — to prove the value of the institution of the Senate to Canadians. We are constantly on trial as we sit in this place, something which we must never forget.

In conclusion, I should like to thank all honourable senators for being so gracious to me and for doing what they are doing. I leave this place with the greatest respect for all who come here to make their own unique contributions.

To my colleagues on this side of the chamber, I will miss you all. It has been a marvellous experience coming to know you. To our leaders Senator Lynch-Staunton and Senator Murray who served before him, you have served us all magnificently and with a deeply held conviction regarding the country, the Senate and political roots.

To Stephen Ball, my alter ego, letter writer, cook, technician, advisor and humorist, you have been the greatest, although I am sorry I got you hooked on wine gums.

To you, Your Honour, and all the staff in Senate offices and this chamber, I extend my thanks for all your help and guidance.

I have been blessed to participate in a journey experienced by only 827 Canadians since Confederation. I am grateful to former prime minister Mulroney for appointing me, and to all of you who have made my journey so memorable. I thank you all very much.

**Hon. Senators:** Hear, hear!

## ROUTINE PROCEEDINGS

### CANADIAN INSTITUTES OF HEALTH RESEARCH BILL

#### FIRST READING

**The Hon. the Speaker** informed the Senate that a message had been received from the House of Commons with Bill C-13, to establish the Canadian Institutes of Health Research, to repeal the Medical Research Council Act and to make consequential amendments to other Acts.

Bill read first time.

**The Hon. the Speaker:** Honourable senators, when shall this bill be read the second time?

On motion of Senator Hays, bill placed on the Orders of the Day for second reading on Tuesday next, April 4, 2000.

## QUESTION PERIOD

### NATURAL RESOURCES

#### DISPOSAL OF CAPE BRETON DEVELOPMENT CORPORATION— PROPOSAL BY COMMUNITY GROUP TO TAKE OVER OWNERSHIP OF DONKIN MINE

**Hon. John Buchanan:** Honourable senators, my question is directed to the Leader of the Government in the Senate. It concerns Devco.

Honourable senators, I have in my hand a letter — and perhaps the leader has received a copy of it — from a group located primarily in the Glace Bay-New Waterford area. This group has formed a co-op with the help of Father George Neville to attempt to take over the Donkin mine. Steve Farrell, a noted mining engineer who I think the minister knows, and who is probably one of a very few mining engineers with an incredible knowledge of the Sydney coal fields, has also assisted in forming this co-op.

As the minister knows, the Donkin mine contains what is probably some of the best coal to be found in the Sydney coal fields. In 1979, the provincial government of the day, of which I had the honour to lead, brought a drill ship in and delineated the seams in the Donkin area. Subsequently, under the leadership of the Honourable Allan J. MacEachen, two tunnels were drilled at a cost of a little over \$80 million between 1980 and 1984-85. Those tunnels were flooded, and properly so, to preserve them. The tunnels are there, the coal is there, and it is ready to go.



With the closure of the Phalen colliery, a considerable number of miners will be displaced and moved over to the Prince colliery. Of course, a certain number of miners will be out of a job. They will receive severance pay, but will not have pensions or a job.

My question is simple: Has the minister been made aware of this proposal from the co-op in the Glace Bay-New Waterford area?

**Hon. J. Bernard Boudreau (Leader of the Government):** Honourable senators, I thank the honourable senator for his question. I am familiar with the group to which he refers, although I believe it is Father Bob Neville who helped with its formation. It is a community group looking at the possibility of conducting mining operations in industrial Cape Breton. As a consequence, it is offering employment opportunities to some of those miners who will receive neither a pension nor be employed in the existing coal industry with the new private-sector operator.

I have not had a chance to review in detail the proposal, nor am I sure if all of its details have been fleshed out.

They are not the only community group involved in this matter. There is at least one other community group that is expressing some interest in aspects of the existing coal field, and for essentially the same purpose. They wish to see if there is an opportunity to employ miners who will not be taken up by the new private-sector operator who will operate existing coal facilities.

I have had an opportunity to make contact with at least two groups. I have informed both that we have a process underway to ensure that the main operations of Devco will be taken over by a new private-sector operator. The potential operator will continue to operate indefinitely into the future and give employment to a large number of miners presently working there.

• (1500)

That is the prime objective, and I believe that process has been an arm's length process. It is now reaching some critical stages. A number of private-sector concerns expressed interest in taking over Devco's operations. We are down to a very short list. That process must be given priority in order to ensure that the main operation continues and that large numbers of coal miners will receive ongoing employment there.

However, it is not necessarily inconsistent that other possibilities might exist. Before we give them serious consideration and perhaps raise expectations to a point which may be unrealistic, we must see the plan of the successful private-sector operator.

**Senator Buchanan:** Honourable senators, I want to thank the minister for that answer. I have no argument with what is happening now. It will happen. We know that and we can debate

the merits or demerits of the Devco plan when Bill C-11 comes to the Senate.

DISPOSAL OF CAPE BRETON DEVELOPMENT CORPORATION—  
POSSIBLE COMPETITION FOR NEW OPERATOR WITH COAL  
IMPORTED FROM UNITED STATES

**Hon. John Buchanan:** Honourable senators, at the present time I have a great concern, as do many Cape Bretoners. As you know, the Nova Scotia Power Corporation uses approximately 2.5 million tonnes of coal annually to generate 80 per cent of our electricity in Nova Scotia. That, of course, is a result of the Lingan power plants that were built in the late 1970s and through the 1980s, the Point Aconi plant and the new Trenton power plant. They all use coal. There may come a time when they may convert to natural gas, although I am told by people in the industry that the cheapest method of generating electricity is still our own indigenous coal.

There is a concern about the Donkin mine getting off the ground, or under the ground, whatever you want to say. This is what I want the minister to check. The concern is that the proposal call from Devco for a private operator to take over Point Aconi apparently includes the right for the successful company to market to the Nova Scotia Power Corporation 1 million tonnes of coal.

In other words, what could happen here is that 1 million tonnes of coal that will be used in Cape Breton may very well come from places like Hampton Roads, Virginia. The coal could come from the mines in West Virginia and Pennsylvania to Hampton Roads and then shipped to Cape Breton. There is well over 1 million tonnes of coal in the Donkin seams that could be mined, and yet these men who will be displaced, who are expert coal miners, may never get the opportunity to mine that coal because it will be coming from the United States. If that is the case, it is unbelievable.

Honourable senators, I have been told that a foreign company, probably from the U.S., will be taking over the Point Aconi plant, and that that company will have the right to then market the coal from wherever they wish. The coal will be brought to Cape Breton to power up the generating plants of the Nova Scotia Power Corporation. That, Mr. Minister, is something that we simply must check carefully and ensure, if possible, that it not occur.

**Hon. J. Bernard Boudreau (Leader of the Government):** Honourable senators, certainly we want to maximize all of the coal resources in Cape Breton, and to create maximum employment opportunities. Once we go through the process, we will have an operator who can achieve solid, long-term markets, be those markets with Nova Scotia Power or with others. The private sector operator, I hope will be a company with solid financial substance that will provide security for those workers who accept employment with that company.

The honourable senator is right in that as a general principle we must ensure that we maximize the resource, given that it needs to be done in an economically feasible way. Part of the history of that coal field — and we are both very familiar with it — is that massive amounts of public money have gone there over the years to subsidize the production of coal. That will not happen again.

Therefore, at the end of the day, I am confident that the miners in Cape Breton, given the appropriate circumstances, will produce coal for a long time. They will do it at competitive prices and they will sell to the Nova Scotia Power Commission. This is not because the power commission wants to do them any favours or because they want to create employment in Nova Scotia. The power commission will buy it because it will be the best and cheapest alternative. I would not be at all surprised to see Cape Breton coal sold in places in the world other than Nova Scotia.

**Senator Buchanan:** Honourable senators, the minister has just touched upon the problem. When he says that there “will be” markets throughout the world for Cape Breton coal, he means there “may be” markets. The problem is that a market exists right now for approximately 1 million tonnes of coal. Whatever the longevity of Prince colliery, it will produce in the range of 1 million to 1.5 million tonnes of coal, maybe a little more. That still leaves the Nova Scotia Power Corporation short — something in the range of 1 million tonnes. The market is right there in Cape Breton at the present time. The claim is that approximately 200 miners could be employed in the new Donkin mine. These investors claim — and this will have to be analyzed carefully of course — they will be able to finance with outside investment and some investment from inside Nova Scotia.

Honourable senators, if that is the case, why would the Government of Canada, through Devco, allow that 1 million tonnes of needed coal to be brought in from outside? Why would the Government of Canada say to the new operator of the Donkin Mine — which would run by Cape Bretoners, or Nova Scotians, generally, “Sorry, but you cannot sell your coal to the Nova Scotia Power Corporation, you must sell it” — as the minister just said — “somewhere in the world.” It will not equitable or fair, if that happens. It does not make sense.

**Senator Boudreau:** Honourable senators, I remain confident and assured that the process that is being conducted at the moment — and I say it is arm’s length from government so I have no knowledge of the details of the process — will cover all of the probabilities of maximizing employment in that region. However, at the end of the day, it will be the miners’ ability to produce that coal, bring it to the surface and offer it for sale at a competitive price, that will determine how much coal will be sold to the Nova Scotia Power Commission and elsewhere.

#### DISPOSAL OF CAPE BRETON DEVELOPMENT CORPORATION

**Hon. Lowell Murray:** Honourable senators, by way of a supplementary question, the minister speaks of the arm’s length process that is underway with regard to the disposal of these assets. I suppose it is proper that there be an arm’s-length process, but invoking that process should not be used by the government to escape its own responsibility for important matters of public policy that are involved. I would like very much to see the mandate that the cabinet has given to the private sector organization that is representing the government in seeking the disposal of these assets.

The minister also spoke of a future private sector operator, in the singular, which leads me to ask him whether it is the position of the government that all of the assets must be sold as one, and to a single purchaser? The minister knows that there are a number of assets — the Prince mine, the Donkin property, the railway, the coal washing plant and so forth.

• (1510)

Is it the position of the government that it would not entertain proposals for one or other of the assets separately? My friend knows that the co-op to which Senator Buchanan referred is seeking only to get one of those assets, namely the Donkin property. I would appreciate it if the minister would answer that question.

Finally, has the minister received a request from this cooperative organization to meet with them, and if he has not done so, will he do so?

**Hon. J. Bernard Boudreau (Leader of the Government):** Honourable senators, the prime motivation of the government is to maximize the potential employment in that area during the course of the divestiture. My comments referred to one private sector employer initially because a bidding process has gone on and, without question, there will be one major operator in the coal field. That company will emerge from this process. I believe that process does not necessarily exclude other operators. I am aware of at least two other groups that have expressed some interest.

The particular group we are discussing here expressed some interest early on to me. My recommendation at that time was that they proceed through the process that was available. Subsequent to that, very recently, they made contact again with my office, looking to speak to me. I have no difficulty speaking with them and meeting with them, as I will with at least one other group. The message that I have given to those groups is that we have a process in place and we cannot interfere with that process as it proceeds. During that process, a recommendation will be brought to the Crown corporation and ultimately through to government, and that does not necessarily preclude other possibilities if they make sense.



## AGRICULTURE AND AGRI-FOOD

### FARM CRISIS IN PRAIRIE PROVINCES—FLOODING PROBLEM IN MANITOBA AND SASKATCHEWAN

**Hon. Terry Stratton:** Honourable senators, I hate to be repetitious in my questions, but I believe last week I had asked about help for the farmers who have been flooded out in southwestern Manitoba and southeastern Saskatchewan. The minister has promised over several weeks now that the case would be carried forward to the Prime Minister and that an answer would be forthcoming. I will be repetitious about this and ask again if any progress is being made in that area.

**Hon. J. Bernard Boudreau (Leader of the Government):** Honourable senators, when the Honourable Senator Stratton last raised this matter, I did some checking because I thought that a response had been tabled. My office indicated to me that on February 24 a response was tabled to the of the honourable senator's question. I do not know if Senator Stratton received the answer, but it did indicate some of the changes and some of the programs that were put in place. However, I indicated once again to the Minister of Agriculture that the honourable senator had raised concerns with respect to the farmers who were unable to plant last spring due to the flooding in southeastern Saskatchewan and southwestern Manitoba. I am prepared to make another copy of the response available.

**Senator Stratton:** Honourable senators, I keep asking this question because nothing specific has been done for that particular group of farmers. I understand that they do not qualify for AIDA, our disaster relief program.

I appreciate what the government has done to help farmers across the country as a whole, but the extent of the relief given to farmers recently will not even pay for the increased cost of fuel for their farms. They are really in a predicament.

My concern and consideration and questioning repeatedly must be specifically for those farmers. Can we fit them into a government program that will help them? According to the Estimates for the next fiscal year, we will spend \$552 million on disaster remediation for the Saguenay region and the Red River region. My guess is that the vast amount of that money will be spent on the ice storm. If we can give help in the form of \$552 million next fiscal year and untold millions last fiscal year and the previous one — well over \$2 billion or \$3 billion — why can we not help these farmers in the same way?

**Senator Boudreau:** Honourable senators, I will do what I should have done initially, which is read parts of the tabled response for the benefit of other senators.

The Government of Canada has made a number of changes to existing Safety Net programs to help farmers who were unable to seed due to wet weather conditions last spring.

In partnership with the Government of Saskatchewan, the Government introduced a \$50 per acre benefit for those with unseeded acres. This offer was also open to the Government of Manitoba as well.

The Government extended the seeding deadlines for crop insurance.

The Government changed the Agricultural Income Disaster Assistance (AIDA) program to allow farmers to get interim payments on their 1999 benefits earlier.

The Government adjusted the Net Income Stabilization Account (NISA) program rules to permit easier access to those funds.

The AIDA program is designed to provide benefits to farmers who suffer severe income drops regardless of the circumstance. This would include farmers who are unable to seed due to wet weather.

I understand that the honourable senator may not feel that this is a complete response to the situation, but it does reflect a response by the Government of Canada to that particular situation.

Honourable senators, I had the pleasure last week of meeting and having supper with the Minister of Agriculture from Nova Scotia, who was in Ottawa, along with his provincial counterparts, to negotiate a new federal-provincial agreement with the federal minister. In fact, he went away from that negotiation most pleased that they were able to negotiate such an agreement and most pleased with the extent of the financial commitment that would apply to Nova Scotia.

I cannot speak to every province, but for the province about which I had an opportunity to discuss with the Minister of Agriculture, I think they would be inclined to say that great progress has been made. Combining the agreement that we saw here when the Premier of Saskatchewan and the Premier of Manitoba stood shoulder to shoulder with the Prime Minister to announce a new one-time program and the increases to the existing AIDA program that was put in place, I think the government has acted in a substantial way over the last number of months.

## FOREIGN AFFAIRS

### CHINA'S HUMAN RIGHTS RECORD—REQUEST FOR TABLING OF DOCUMENT OUTLINING GOVERNMENT POLICY

**Hon. Consiglio Di Nino:** Honourable senators, the U.S. State Department recently tabled its 1999 "Country Report on Human Rights."



• (1520)

The report on China, which runs some 70 pages, states that China's poor human rights record deteriorated markedly throughout the year. This report details numerous human rights violations, such as intensified efforts to suppress particularly organized dissent, increased control and manipulation of the press by the government, and continued restrictions on freedom of religion including intensified controls on some unregistered churches.

Will the Leader of the Government in the Senate table the position of the Government of Canada on China's human rights record?

**Hon. J. Bernard Boudreau (Leader of the Government):** Honourable senators, Canada's engagement with China on the issue of human rights is based upon three main pillars. Concerns are conveyed on a regular basis at the most senior levels with respect to both specific instances and the general policy of that government. In addition, we have established a joint committee on human rights, the fourth meeting of which was held last fall in China. We have also established a human rights symposium involving over 10 countries and the third round of that symposium will be held in Thailand, in June.

Our human rights programs with China go beyond simple expressions of concern, consultations and visits. The Canadian International Development Agency continues to develop numerous projects that are helping to build the rule of law in that country. One example is the training of judges. The Canada-China human rights dialogue has allowed Canada access to Chinese agencies whose cooperation is essential to improving human rights practices in China.

If the honourable senator asks if we are satisfied with the level of human rights in every case, the answer of course is no. However, many areas of contact will move the goalposts closer in the whole area of human rights.

## HUMAN RIGHTS

### CHINA'S RECORD

**Hon. Consiglio Di Nino:** Honourable senators, I do not know how to put this gently. It certainly appears to me that great effort, energy and expense, has been expended by our country in this engagement with China, including all of these committees. I understand most of these committees operate behind closed doors. This secrecy has resulted in the deterioration of the process on these issues, including most recently the incredible action against the Catholic Church. We are not even talking about the Falun Gong, but the Catholic Church. The Catholic Church is not recognized by China because Catholics believe in

the Pope. They are persecuting and putting in jail people who are trying to practise a religious freedom.

It seems to me that since the engagement of this country in this dialogue, the actions of China are worsening. How does the Leader of the Government explain that?

**Hon. J. Bernard Boudreau (Leader of the Government):** Honourable senators, I would not entirely agree with the honourable senator's assessment that the situation in China with respect to human rights is getting worse. There are many instances in China where a Canadian government could not possibly support and, indeed, would condemn the actions of government agencies in that country. The honourable senator has raised one of those areas in this chamber.

As with other countries, the principle of contact and the efforts that we have made, while they may not yield the immediate results we all would wish, have, over a period of time, moved things forward, as they have with respect to other countries. Ultimately, that sort of contact will be productive in many of the areas that the honourable senator raises.

**Senator Di Nino:** Honourable senators, I have a great deal of sympathy with the minister. He is obviously presenting the party line, and I am sure he does not believe half of what he is reading.

Here is the issue: I just asked a question that dealt with a 70-page report by the United States Department of State that details the abuses that China is committing against its own citizens.

Does the leader not feel that these meetings that are taking place should be held in public? Second, would it not be of value to have parliamentarians participate in these meetings so that they can bring back reports on what is happening?

**Senator Boudreau:** Honourable senators, I take seriously the honourable senator's suggestion with respect to expanding the role of parliamentarians in some of these areas, and I will pass that suggestion along to government.

We have seen unbelievable changes in the world in the past 10 years. If we look to Eastern Europe, we can see situations where the world today has moved at a pace that none of us would have believed possible 10 years ago. Human rights improvements have been significant there.

China has not moved as quickly as many of us would like in the field of human rights. The Government of Canada has taken every opportunity to speak on its position with respect to human rights and some of the incidents to which the honourable senator refers.

Contact and the efforts that have been made will exercise a positive influence and move the human rights issue forward. I believe the government will continue with these efforts, perhaps considering the suggestion that the honourable senator made with respect to the participation of parliamentarians on a wider basis.

CHINA'S RECORD—UNITED STATES  
DEPARTMENT OF STATE REPORT—GOVERNMENT POSITION

**Hon. John Lynch-Staunton (Leader of the Opposition):** Honourable senators, does the Government of Canada agree with the assessment of the Department of State in its most recent annual report on the human rights situation in China, one of extraordinary pessimism that things are not improving?

The assessment of the state department is supported by NGOs such as Amnesty International, Human Rights Watch, Asia Watch and others. I wish to know from the Leader of the Government in the Senate, does the Government of Canada share the view on the situation of human rights in China as expressed in the last State Department assessment?

**Hon. J. Bernard Boudreau (Leader of the Government):** Honourable senators, with the indulgence of the honourable senator, I wish to consult some notes I have here with respect to that matter.

During a press conference on January 11 of this year, the State Department of the United States announced that the Clinton administration, as a result of some study and investigation that they had done, intends to present a resolution on China at the next meeting of the UN to be held in Geneva. The information I have is that our Department of Foreign Affairs is currently consulting with other countries to determine what position Canada will take with respect to that resolution sponsored by the United States. In addition to any action it might take there, Canada will continue its efforts to pressure for improvements in the human rights situation in China.

• (1530)

**Senator Lynch-Staunton:** Honourable senators, as usual, the leader has not answered the question, but if he reviews the resolution, the resolution from the United States would be to condemn the human rights situation in China. Will the Government of Canada support that resolution? It is as simple as that.

**Senator Boudreau:** I have indicated that the Government of Canada is now in discussions with other countries that will be facing that resolution.

**Senator Lynch-Staunton:** Can you not make up your own mind?

**Senator Boudreau:** Honourable senators, I do not know that the government has given a formal indication of what its position will be at that stage.

**Senator Lynch-Staunton:** Typical!

**Senator Boudreau:** Whatever decision is taken, the goal will be to improve the situation in China. The issue is simply what the most effective tactic might be to achieve that result.

## NATURAL RESOURCES

DISPOSAL OF CAPE BRETON DEVELOPMENT CORPORATION—  
EFFECT OF NEW TECHNOLOGY TO CREATE  
HYDROGEN FROM COAL

**Hon. Nicholas W. Taylor:** Honourable senators, I have a question supplementary to Senator Murray's and Senator Buchanan's questions on Cape Breton. I am seeking information regarding the coalfields in Sydney. I am not thoroughly familiar with them but, as a mining engineer who has operated in the coalfields in the Rockies, the eastern coalfields do interest me.

One of the things that has come over the horizon in recent times is the Ballard cell which actually extracts hydrogen from hydrocarbon oil to drive vehicles. Recent research shows that coal, and not oil and gas, may be the best fuel source. In other words, Cape Breton may turn out to be another Saudi Arabia down the road if this type of energy takes over.

I am wondering about the government's analysis, knowing that governments are sometimes marching to a tune which quit playing 20 years earlier. When the government was evaluating Cape Breton, did it take into consideration the newest technology of hydrogen creation from coal? That technology race is probably led by South Africa right now but there is much activity in Vancouver and the western part of Canada.

**Hon. J. Bernard Boudreau (Leader of the Government):** Honourable senators, I am not specifically familiar with that technology but I know that from time to time over the past decades, various technologies and new potential uses for coal have come to the fore. There is a huge reserve of coal in Cape Breton, and any new technology that creates a demand for that resource will be a positive sign.

The fundamental decision — and I am not so sure there are many people who would disagree with it — is that the Government of Canada should not be in the business of mining coal. We have not done that well, and there are other examples where government has been in business where perhaps it should not have been. My hope is that if that sort of technology does come along, it will be utilized to the best advantage by a strong, well-financed, forward-looking private sector firm. In that way, the workers and the people of Cape Breton will receive the maximum advantage.



[Translation]

## ROYAL ASSENT

## NOTICE

The Hon. the Speaker informed the Senate that the following communication had been received:

## RIDEAU HALL

March 30, 2000

Mr. Speaker,

I have the honour to inform you that the Honourable Ian Binnie, Puisne Judge of the Supreme Court of Canada, in his capacity as Deputy Governor General, will proceed to the Senate Chamber today, the 30th day of March, 2000, at 5:00 p.m. for the purpose of giving Royal Assent to certain bills.

Yours sincerely,

Judith A. LaRocque  
*Secretary to the Governor General*

The Honourable  
The Speaker of the Senate  
Ottawa

[English]

If the Deputy Leader of the Government could walk us through how he sees things being called, honourable senators might find that helpful. Will we resume after Royal Assent, and should we anticipate coming back at eight o'clock tonight or not seeing the clock at six p.m.?

**Hon. Dan Hays (Deputy Leader of the Government):** Honourable senators, as the Deputy Leader of the Opposition knows, sometimes it is difficult to be precise in estimating the time that is taken for tributes, for Question Period and Senators' Statements, which we did not have today, but leave is often granted to extend time.

We have under "Government Orders," Bill C-9. Looking at the clock, we have roughly one and a half hours before five o'clock, at which time we will rise to await the representative of Her Excellency. I am assuming the Royal Assent ceremony will take approximately half an hour. Because we have a new Governor General, letters patent for the authorization of her representatives from the Supreme Court of Canada have to be read in full.

If we intend to be serious in dealing with the Order Paper today, we will have to sit after the Royal Assent. I propose that we see where we are at that time. If at six o'clock, we are still in session, I suggest that we not see the clock.

Senator Austin will lead with a speech on Bill C-9. I am not sure whether there is a response on the other side. If there is, I suspect that will take us close to five o'clock. Then Senator Fraser will be speaking on Bill C-20. I assume that the opposition will hold the adjournment. I do not believe that she has a long speech. Senator Moore would like to address Bill C-10 at second reading.

• (1540)

I suspect that, on item No. 4 on the Order Paper, Bill S-19, the amendments to the Canada Business Corporations Act, we will not be hearing from Senator Tkachuk today. I know Senator Wilson wishes to speak to it. If she speaks, we will have to ensure that it does not interfere with Senator Tkachuk's 45-minute time allocation. If that takes us to 6:30 or seven o'clock, I suspect that we will be coming to the end of our day, given the observation that senators tend to travel on this day.

There is one speech, however, that we would like to hear. I see Senator Angus is here and I know that he intends to speak to the marine liability legislation. I am not certain what his travel plans are, but if he is present in the chamber we will be pleased to hear his intervention.

At that stage of our proceedings, I will ask leave to allow all remaining matters to stand until our next sitting, which, while I have not dealt with it yet, would, I anticipate, be Tuesday next at two o'clock.

## ORDERS OF THE DAY

## BUSINESS OF THE SENATE

**Hon. Noël A. Kinsella (Deputy Leader of the Opposition):** Honourable senators, would the Deputy Leader of the Government walk us through the order of business for the rest of the day? His Honour has just indicated that, at 1700 hours, we will have the deputy of Her Excellency the Governor General here for Royal Assent. All honourable senators would like to know at what time we will be adjourning to attend upon the deputy of Her Excellency. Will it be at 4:45?

As we look at the Order Paper, just what might be the order in which things will be called?

[Translation]

I would like to point out for the benefit of our colleague, the whip, that responsibility for the quorum concerns all honourable senators. It is a challenge for the government whip, because it is important to have a quorum for Royal Assent.



Honourable senators, that is my best guess as to how we will proceed. I presume that we will sit past six o'clock but I anticipate that we will not sit past seven o'clock. It will, of course, be necessary for us to obtain leave. Of course, we have the option of resuming the sitting at eight o'clock. That, I assume, is very much a second choice.

I notice that the whip is in agreement with my comments. I hope that we will have a quorum.

**Senator Kinsella:** I would thank the honourable Deputy Leader of the Government for his comments. It is helpful for all honourable senators to know how the afternoon will proceed.

## NISGA'A FINAL AGREEMENT BILL

### THIRD READING—DEBATE SUSPENDED

**Hon. Jack Austin** moved the third reading of Bill C-9, to give effect to the Nisga'a Final Agreement.

He said: Honourable senators, in rising to begin the debate on third reading of Bill C-9, to implement the Nisga'a Final Agreement, I wish to make my purposes on this occasion clear. I do not intend to repeat or review what I had to say in this chamber on December 16 last about the Nisga'a people and their long efforts to achieve a just solution to their claims and rights, nor do I intend to repeat or review my position with respect to all or most of the issues which I covered at that time. I hope that honourable senators will read my remarks of December 16 when they consider this proposed legislation.

Today, my purpose is to review the evidence presented by witnesses who came before the Standing Senate Committee on Aboriginal Peoples. I wish to focus on only three main issues in this presentation. Let me begin by mentioning the work of the committee and the context in British Columbia which forms the background of this legislation.

Following second reading debate in the Senate on Bill C-9, the Nisga'a Final Agreement, which debate commenced on December 16, 1999, the bill was approved in principle and referred to the Standing Senate Committee on Aboriginal Peoples. Committee hearings began with the appearance of the Honourable Robert Nault, Minister of Indian Affairs and Northern Development, on February 16. Since that time, the committee has had before it some 30 witnesses in over 25 hours of meetings. I believe all members of the committee will agree that the committee's hearings gave full and fair

opportunity to those who wished to speak to all sides of the relevant issues.

I would commend honourable senators who served on the Aboriginal Peoples Committee for their diligence and dedication to the study of Bill C-9. The deputy chair of the committee, Senator St. Germain, who comes from British Columbia, as I do, played a particularly active role and, while not neglecting any issue, gave special attention to the question of overlapping aboriginal claims. As chair of the Aboriginal Peoples Committee, I extend my appreciation to all members for their support. I also wish to add a special thanks on behalf of the committee to Senators Grafstein, Lawson, Sparrow and Tkachuk who, while not permanent members of the committee, attended and participated as if they were. Their contribution is much appreciated.

As honourable senators know, the subject matter of Bill C-9 has had a high public profile in British Columbia. In some part, this is because it signals a historic change in over 100 years of relations between the aboriginal community and the public at large.

The enhancement of the Nisga'a identity, which is ensured by the establishment of new self-governing powers, the transfer of lands and resources, and the removal from the authoritarian provisions of the Indian Act, promises in future times a larger and more influential role in the public, social and economic affairs of the province for the aboriginal community as a whole. This is an uncomfortable development for some in British Columbia, who, for deep conviction about political values or for economic reasons, see assimilation as the desirable or even necessary goal of public policy and are therefore hostile to the very concept of distinct aboriginal identity and the existence of a collective society within our greater society which is more individualistic in nature. The evidence of Gordon Gibson made these points clearly.

For others in British Columbia, the Nisga'a Final Agreement, while welcomed in a notional way, was mistrusted because it was the leading legislative priority of a highly unpopular provincial government whose hallmark in virtually all public issues can fairly be described as adversarial. While the Glen Clark government became unpopular and controversial for many non-related reasons, the general tone of public affairs in British Columbia was not conducive to public support for this or any other initiatives of that government. Thus, the presentation of this legislation was destined for political disapproval without real examination. The legislation became another hostage to the fortunes of the Clark government.

Notwithstanding all this, when the Nisga'a Final Agreement was announced to the public by Dr. Joseph Gosnell of the Nisga'a Tribal Council, by Honourable Jane Stewart, the then Indian affairs minister, and by then premier Glen Clark, the polls showed a majority of British Columbians supported the agreement. As the fortunes of the Clark government sank to an all-time low in public esteem, the polls showed a modest decline in support for the agreement.

For the public at large, in spite of over 500 community consultations in British Columbia and an open information process, in spite of the existence of the Treaty Negotiation Advisory Committee on which was represented every important business sector organization in the province, 35 member organizations in all, and in spite of the existence and involvement of advisory councils of citizens for wildlife, forestry, fisheries, mines, taxation, and self-government, and the role played by regional councils in the northwest part of British Columbia where the Nisga'a reside, still some who are fundamentally opposed to change will continue to say that the public was not informed or consulted and had no chance to present their views. We have had some of this comment from certain witnesses.

There remains, of course, a body of citizens who are well informed and who are genuinely concerned about the specific provisions contained in Bill C-9 and in the Nisga'a Final Agreement. Their issues must be addressed fully, and the nature and purposes of the bill made as clear as human communication allows. In the course of the evidence, we heard questioning of, support for, and opposition to, a number of the key points in this proposed legislation. Let me turn to those points.

First is the question of the constitutional character of this bill. Does it fall within the terms of section 35 of the Constitution Act, 1982, which would give it constitutional protection not only for land claims but also for its self-government provisions, or is it in the nature of a constitutional amendment, which would require, under British Columbia law, a referendum giving public approval before its approval by the provincial legislature?

If it is believed to be a constitutional amendment, then the provisions for amending the Constitution itself would apply if it were to be an agreement which would be constitutionally protected. That is not a step which I believe need be taken.

• (1550)

In addressing this question, some witnesses, such as Mr. Alex Macdonald, the former B.C. Attorney General, told the committee that they could accept the Nisga'a Final Agreement if section 35 were not applicable and if its terms were based on delegated power and not constitutional protection. Under delegated power, the authority to change the Nisga'a Final Agreement would remain with Parliament and the provincial legislature. Under the Nisga'a Final Agreement, any change to its terms requires Nisga'a agreement as well. To change the agreement without Nisga'a approval would itself require a constitutional amendment.

All the parties to the agreement accepted the Nisga'a position that, for their protection against the possibility of arbitrary future attitude, the agreement had to be made certain and not left open to question by sudden change in public pressure. The aboriginal community can point to an unfortunate history in that regard, including, in the case of British Columbia, laws that at one time banned them from seeking their rights in our courts.

Other witnesses addressing the section 35 issue argued that no law has yet established whether the self-government provisions

of the Nisga'a Final Agreement can be given constitutional protection under section 35.

Those who said this question was in doubt, including a former justice of the Supreme Court of Canada, the Honourable Willard Estey, as well as Mr. Mel Smith, a former constitutional advisor to the B.C. provincial government, argue that the issue is of such importance that Bill C-9 ought not to be passed by the Senate but tabled with a request to the Government of Canada to direct a reference to the Supreme Court asking for an advisory opinion.

The Honourable Robert Nault, Minister of Indian Affairs and Northern Development, in his second appearance before the committee on Thursday, March 23, defended the constitutionality of the Nisga'a Final Agreement and stated that, in the view of the government, all of its provisions would be constitutionally protected by section 35, which was also necessary and desirable. He also said that the government had no intention of making a reference to the Supreme Court of Canada.

In my address to the Senate on December 16, 1999, I gave close examination to the section 35 question and cited Dean Peter Hogg and Professor Patrick Monahan of Osgoode Law School, as well as Professor Brad Morse of the University of Ottawa Law School, as supporting the constitutionality of Bill C-9 as well as the protection which section 35 will give to its provisions.

Before the committee, Professors Bruce Ryder and Kent McNeil of Osgoode Law School gave strong endorsement to these positions, as did Professor Doug Sanders of the Faculty of Law of the University of British Columbia.

My view of the section 35 question, in short, is that the great preponderance of evidence from constitutional experts is that Bill C-9, the Nisga'a Final Agreement, is valid, does not constitute an amendment to the Constitution of Canada, and that the rights created by Bill C-9 are to be constitutionally protected by the provisions of section 35.

My view expressed on December 16 last has been reinforced by the participation of the witnesses and by the contribution to the committee proceedings of Senator Beaudoin, Senator Andreychuk, and Senator Grafstein in particular.

The second issue which received considerable attention is whether a third order of government is being created which in some way will affect the division of powers set out in sections 91 and 92 of the Constitution Act, 1867 and would therefore be unconstitutional in its very nature.

The Nisga'a Final Agreement does provide to the Nisga'a certain legislative powers which are applicable to their own internal governance. These powers relate to matters such as education, culture, and social relationships among the Nisga'a. They are concurrent powers, in some respects, with federal and provincial powers, and the exercise of such powers must at all times meet federal and provincial standards.



In questions such as who are recognized as Nisga'a and some similar matters, the laws to be made by the Nisga'a will prevail, but only if they are consistent with the Charter of Rights, which is the paramount law.

Paragraph 9 of the agreement's general provisions provides as follows:

*The Canadian Charter of Rights and Freedoms applies to Nisga'a Government in respect of all matters within its authority, bearing in mind the free and democratic nature of Nisga'a Government as set out in this Agreement.*

This makes it clear that the Charter will apply to the activities of Nisga'a government, including its law-making authority, and that the protection of the Charter will be available to all persons affected by Nisga'a government decisions.

With respect to the notion that all law-making authority must be found only in the Constitution Act, 1867, Professor Sanders of the University of British Columbia said in his evidence:

The year 1982, then, does represent, I think, something of a watershed, in that we come to terms in constitutional language with the fact of our colonial history and the continued existence of Indian communities within the country that have not been assimilated and who are determined to continue as distinct communities within Canada. Once we constitutionalize those rights in 1982, the older idea of a simple division of authority between two levels of government was gone.

Later he said:

We also abandoned another fundamental principle in 1982, which is the idea of parliamentary supremacy, that the Constitution simply divided authority between two levels of government. The Charter represented a major change in Canadian constitutional life by creating limitations on the powers of both the federal and provincial governments, something totally different from the scheme of the Constitution Act, 1867.

Professors Ryder and McNeil made similar statements, as has Senator Beaudoin.

The third key issue on which the committee spent much time is that of overlapping claims. While the Nisga'a had entered into boundary and use agreements with the Tahltan and Tsimshian nations, the Nisga'a Final Agreement proceeded in spite of the non-resolution of these issues with the Gitksan Nation or the Gitanyow Nation.

Conflicting claims of entitlement were made by the Nisga'a, the Gitksan and the Gitanyow. The committee was presented with maps, historical evidence, and an outline of the course of failed negotiations. Elmer Derrick and Earl Muldon, otherwise known as Delgamuukw, were present for the Gitksan. Glen Williams made the major presentation for the Gitanyow. We also heard from Neil Sterritt, a Gitksan, who had the role of negotiator at one time.

As I said to these witnesses during the hearings, neither the committee nor the Senate is a body to mediate, arbitrate or otherwise participate in dispute settlement. We may be of assistance if by the public presentation of claims and issues that prospect of settlement is moved forward. However, our task is to determine whether the proposed legislation before us has taken into account, in a fair and equitable way, the interests of the stakeholders and whether, on balance, the Government of Canada, the House of Commons, and the legislature of the Province of British Columbia have made decisions — for it is the job of governments and legislators to decide — that can be justified as in the public interest.

It has been longstanding policy in the Government of Canada, going back many years, that in negotiating modern treaties it is always preferable for aboriginal groups with overlapping traditional territories to reach agreement among themselves on the future use of those overlapping areas.

• (1600)

Minister Nault, in his evidence on March 23, said:

Let me be clear. The federal government is prepared to move forward in the absence of an overlap agreement if, and only if, the following criteria apply: The group that is ready to settle has negotiated with its neighbours in good faith; measures taken to resolve the impasse have proven to be unsuccessful; and the treaty contains an explicit statement that it will not affect any aboriginal or treaty rights of any other aboriginal group. The federal policy on overlaps recognizes that, in the face of unresolved impasses on overlap issues, the only solution may be to negotiate a treaty with each group in turn while respecting the rights of other affected aboriginal groups.

It is important to note that, in the case of the Nisga'a Final Agreement, the Nisga'a and the Gitanyow are both signatories to the 1991 Northwest Treaty Accord that addresses common property. In addition, the Nisga'a have entered into bilateral overlap memorandums of understanding with both the Tsimshian nation and the Tahltan peoples. The Nisga'a Final Agreement contains an explicit statement that its provisions will not affect the aboriginal treaty rights of any other aboriginal group.



Honourable senators, the provisions of the Nisga'a Final Agreement make clear that the boundaries and uses for territory under the Nisga'a agreement can be changed either with their agreement as the result of negotiations with overlapping tribal nations — the Gitsxan and the Gitanyow and the question before us — or, alternatively, by litigation. If a court decides that the boundaries of Nisga'a lands have been wrongly agreed to and the evidence indicates that those lands are the entitlement of another nation, then the agreement, by its provisions, gives effect to that court decision. These are two methods by which the overlap issues can be settled. Some object, saying that this may require long and costly litigation. It is our system that if parties cannot agree, the courts will settle the issue. They are our recourse to peaceful dispute settlement.

The committee, as honourable senators are aware, decided to append an observation to the fourth report. In our observation we said that although we are aware and understand the equity which exists in the agreement to provide for a settlement of overlap claims, we are nonetheless concerned and urge the government and the parties to negotiate expeditiously and continuously in the prospect of the settlement of those claims. I speak now of the Nisga'a, the Gitsxan and the Gitanyow, as well as the Government of Canada and the Government of British Columbia. We also note the public concern in British Columbia with respect to the broader context of ongoing aboriginal claims. As we have noted in our observation, we have a negotiating process that will, in time, involve the more than 50 First Nations in British Columbia. There are many overlapping claim issues that will affect those negotiations. As a committee, we believe that the Government of Canada, in particular, should give the highest priority to the negotiations and to systems of settlement that can include mediation or, perhaps, arbitration, if the parties in question are prepared to proceed in that way.

Honourable senators, there are many other issues that came before the committee in the evidence that we heard, such as questions relating to fishing rights, which are of interest to Senator Comeau. There were questions with respect to the definition of "citizenship" and the political right of non-Nisga'a minorities, which are of particular interest to Senator Grafstein. There was the question of the nature of Nisga'a self-government in the operating sense; as well as the use and entitlement to individual properties by Nisga'a members. I will not attempt to deal today with these questions, and others. I do not believe they are in any way an impediment to this particular legislation. However, there is information, and I believe it is satisfactory, for honourable senators should they wish to have it.

My final comment in opening the third reading debate is to remind honourable senators that the Nisga'a Final Agreement is the product of many years of negotiations — negotiations that are complex because they had to meet the requirements of the Government of Canada, the Province of British Columbia, the Nisga'a themselves and, wherever possible, the other stakeholders in the province of British Columbia. It has taken many years to reach the conclusion that is

before us now. We are the last legislative step in this process. As such, we have a particular responsibility for care. We have a particular responsibility, in my submission, to the Nisga'a people to treat their agreement with the Government of Canada and the Province of British Columbia with the utmost seriousness, with support and with our endorsement.

Honourable senators, those are the remarks I wish to make at the moment. I look forward to the opportunity to conclude this debate over the course of the next few days.

**Hon. Gerry St. Germain:** Honourable senators, I should like to ask a question of the Honourable Senator Austin. As Senator Austin has informed the Senate in his speech, the major concern that I have is with the overlap situation, which I will deal with when I address the Senate on this important piece of legislation.

There is no question that to British Columbians this is the beginning of negotiations with a huge number of native bands within our province as we seek certainty from economic and other perspectives, in the main trying to improve the plight of our aboriginal peoples in the province of British Columbia.

I informed the Honourable Senator Austin of the question I am about to ask. I did that because it is only fair. This is not a matter of trickery or opposition; it is a matter of finding a resolution and a level of satisfaction for all the peoples of British Columbia in regard to what the government is doing to them in this particular instance. In many cases, governments do things to people instead of for people. The greatest concern of rank and file non-natives is the question of accountability. They want to make certain that all natives in these particular bands will benefit. We all know how the media can grab a headline and run with an issue and try to castigate native band leaders as being corrupt and so on. It is a fact of life that this happens, unfortunately. Many good people are victimized under such circumstances.

• (1610)

I am continually asked: What level of accountability will this provide for the rank-and-file Nisga'a people so that everyone will benefit equally? What we will be doing in this particular case is, by virtue of non-delegation, constitutionalizing this proposed legislation and this agreement.

Mr. Jim Aldridge, who is well informed on this, has used the expression that this is no different from a municipality. When I asked them how they would sustain economic viability, the answer was that there would be transfer payments from the government to the bands.

The question I put to Senator Austin in committee, and which I said I would ask here, is: What are the checks and balances? If, for some odd reason, in the future — and it does not matter whether the Nisga'a enter into other agreements — we enter into an agreement that is constitutionalized, as this one will be, will we be allowed to withhold funding? What other method of checks and balances is available?

I know the Nisga'a have properly addressed this from their perspective and have said that they will have checks and balances within their constitution. However, if we are to accept the statement that it will be similar to a municipality, we all know that if, for any reason, a municipality goes astray in its administration, the province can withhold funding.

I have given Senator Austin notice of this question so that, hopefully, he will be able to provide an answer. Where are the checks and balances? Where will the comfort be for those people all across the country who are concerned about this, but especially British Columbians since it is so close to home?

**Senator Austin:** The honourable senator has used the word "accountability" in different senses in his short question. I feel compelled to separate the question into its constituent parts.

There is the meaning of "accountability" in the accounting sense; that is: Where is the money? Do we know where the money goes? Do we know how it was used? I believe that the Nisga'a constitution and the agreement provides a sound and proper system for accounting.

The Nisga'a government will be obliged to account to the government of the Province of British Columbia for the funds it contributes, and to the Government of Canada for the funds it contributes. It will be obliged to account to the Nisga'a people in an open and accountable way for the manner in which it conducts its government in the financial and accounting sense.

Senator St. Germain also used the word "accounting" in the sense of equitable distribution of the benefits, which adds a more political tone to the definition of "accountability". "Political accountability", perhaps, would be what he meant. The Nisga'a government will be a popularly and democratically elected government. It will pursue policies in the same way that any government pursues policies; that is, with its mind on its voters. I would make the assumption that that government will take into account all of its voters in deciding what programs to follow, how to spend money, where to invest in the well-being of the Nisga'a community. That is a matter of fundamental democracy which is an obligation of the Nisga'a Lisims government.

The word "accountable" to the non-Nisga'a stakeholders is, again, a question of political accountability. The Nisga'a government is not a government that will conduct the affairs of the Nisga'a community in the absence of the observation of its neighbours. The Nisga'a government will be a part of the regional council of Kitimat and the northwest area. It will have relations with its aboriginal and non-aboriginal neighbours in fields like health care, regional development, highway construction, communication, and all the other facets which are relevant to a community living within a much larger community.

I also believe that the Nisga'a Lisims government will be aware of the eyes of British Columbia and Canada viewing this as a major change in relations between the aboriginal community and the general community. The public at large will be watching

to see how successful this agreement will be in its implementation and in its effect. In that way, I believe, politically, that the Nisga'a Lisims government will understand clearly that it has a political accountability, not only to its members but also to the people of British Columbia, to its neighbours in their part of the province, and to the aboriginal community as a whole.

That is my answer to the honourable senator's question.

**Senator St. Germain:** Honourable senators, all of us have come to know the people who are in responsible positions at this time. The question relates not to when things are operating properly, which the honourable senator refers to, but to when there is a breakdown of the financial accountability. My question is this: Is there any possibility that transfer funds can be withheld if financial accountability is not being satisfied within these particular nations? Does the province and the federal government have the right to withhold funding? My question is not about political accountability, it is about financial accountability.

**Senator Austin:** Honourable senators, because the question deserves an absolutely accurate answer, I will look at those agreements and draw the attention of Senator St. Germain to the appropriate clauses therein. I will do that before the conclusion of this debate.

**Senator St. Germain:** Thank you.

**Hon. Gérald-A. Beaudoin:** Honourable senators, I have a question for Senator Austin. It concerns the debate on the concurrent power and paramouncy.

The honourable senator has given a good report on this question but committee members were still divided on it. It is true that some experts, not all, came to the conclusion that it was perfectly constitutional. Notwithstanding that, however, I believe that some senators, on both sides of the committee who were still not convinced. I think there is a serious doubt about the constitutionality of certain articles that give paramouncy.

Having said that, I have no hesitation in speaking in favour of the accord.

The question is: What should we do at this stage? Is it our intention to go forward acknowledging that, if this question of constitutionality is put before the courts, we will comply with the decisions of the courts? Would it not be better — as the Governor in Council has a right to do — to raise that question in the courts before passing the bill and giving it Royal Assent? Perhaps this question is already before the courts. The fact is that, since the doubt is serious, I believe the question should be resolved.

I have no problem with the remainder of the bill. I am very much in favour of the treaty rights contained in the agreement and of giving generous interpretation to section 35 of the Constitution Act, 1982. The agreement should be generous. However, there is still some doubt in my mind about the question I raised. Do I understand correctly that the doubt will be ignored?



• (1620)

**Senator Austin:** Honourable senators, I know that this issue has been raised by the honourable senator in committee. I am satisfied that those powers which are accorded to the Nisga'a Lisims government in Bill C-9 are within the constitutional power of Canada and the Province of British Columbia to provide. In the *Delgamuukw* case, it was implicit within the court's definition of aboriginal title that there be a right of collective governance. That is a right of self-government with respect to the use and allocation of lands and to the governance of the affairs of the collective entity. With that implicit comment, I believe there is a constitutional foundation for this particular provision.

I do not have a case directly on point, nor has Senator Beaudoin.

**Hon. Lowell Murray:** But he wants to create one.

**Senator Austin:** We are arguing by implication. Legislation changes the meaning of laws, and decisions must be taken. The parties to this agreement see it very much in the interests of them all to provide the Nisga'a Lisims government with the capacity to govern those narrow affairs — I think there are 14 items in all — that federal and provincial law would not override in the area of self-government affecting education and culture.

**Senator Beaudoin:** For the purpose of the record, I wish to say that so far the Supreme Court has never said that there is such a thing as a third order of government. They may say that in the future, but they have not done so yet. In my opinion, we are divided on this issue. I do not think that section 35, as it is now, confers an inherent right to a third order of government. If the court says that, then I would agree and would follow their decision. However, it has not been said.

I have read the cases mentioned, and nowhere does it state that there is such a thing as a third order of government under section 35. We have a serious doubt. In the end, only the courts can settle this matter. I understand that this is what will happen.

**Senator Austin:** I should like to respond to your observation, Senator Beaudoin, by making it clear that the evidence before us from all of those constitutional authorities who spoke in favour of Bill C-9 was that the *Delgamuukw* case established that self-government would fall within the definition of section 35. However, the court said that it cannot decide the issue on the basis of broad claims. It urged the parties to negotiate the issues that are involved in self-government and asked that agreements be concluded. The court cannot address the broad claim, but it can address the specific powers that have been created under the concept of self-government for the aboriginal communities.

I agree with my honourable friend. We are responding to directions of the court. However, there is no full, final

determination by the court of how broad the powers of the government are under section 35. The duty of legislators is to legislate. If the court has another view on this issue, we will certainly hear about it, as the honourable senator says, and will have to accommodate it.

**Hon. David Tkachuk:** Honourable senators, I wish to follow up on the previous question. Section 35 and the question of self-government bothered many of us throughout the entire hearings of our committee. We heard the professors of law from Osgoode Hall talk about this new theory of constitutional law to which the government obviously subscribes now. When I asked Mr. Molloy why the rules outlining self-government were put into the treaty so that it would fall into section 35 rather than being delegated, he said it was because they insisted on it. Obviously, the government has said that it will go in that direction.

The concurrent power was not addressed satisfactorily by the government witnesses nor by the Osgoode Hall group that has this interesting theory of constitutional law. If concurrent powers are now recognized by the Liberal government as being in what I call this new third order of government on education, on culture, and so on, these powers are quite wide-ranging. They are drawn from 1867 and previous years, which is the reason for these powers being concurrent. Does the Government of Canada subscribe to the fact that the concept of concurrent powers for defence, communications and other areas — areas that people would find totally unbelievable, but that is the logical conclusion — is the direction in which we are going? Can concurrent powers for almost all areas of government fly from section 91 and section 92 and be placed in future treaties and then "constitutionlized" under section 35?

**Senator Austin:** Honourable senators, I recognize the Senator Tkachuk's question because he pursued it with experts during the course of committee hearings. I should like to answer the honourable senator in the following way.

Section 35 is a part of the Constitution of Canada. By bringing section 35 into being, the federal government and the provinces agreed to a limitation on their powers under the 1867 Constitution in which all powers were assigned to either the federal government or the provincial governments under sections 91 and 92. Section 35 says that under our Constitution aboriginal rights must be included and taken into account in the exercise of future legislative authority by the federal government and the provinces. These rights were protected, first, by the Royal Proclamation of 1763, and then all existing rights were protected in 1982. A provision of the Constitution made it clear that broader rights, not simply historical rights, could be created by those governments, federal and provincial, and that those rights, when created, would be protected by section 35. There is a "living tree" doctrine here, not only in the processes of legislation but also in the judicial opinion of the Supreme Court of Canada. At another time, possibly in my concluding remarks, I could refer to some of those Supreme Court of Canada cases.



• (1630)

Finally, in response to the honourable senator's observation, I suppose that if a federal and provincial government agreed to broader powers than those that exist in the Nisga'a Final Agreement, those broader powers would be part of that encroaching aboriginal right. Remember, however, that the precondition is agreement by a federal and provincial government.

There will be future negotiations with aboriginal communities. There will be differences in the shape and nature of the legislation that is brought before us in terms of what rights any particular aboriginal community would like to exercise. However, we will see nothing unless the Government of Canada and the government of a province agrees to it and legislates it in the specific provincial legislature and in the House of Commons.

I do not think a worst-case worry that future politicians may do something that is in derogation of the future public interest is a fair basis for establishing the concern at this time with respect to this legislation.

**Senator Tkachuk:** The worst-case worry that I have about future politicians is perfectly symbolized in the bill.

I was at those meetings in 1982 and 1983. I think former prime minister Pierre Elliott Trudeau would be very surprised at what is happening in this bill. I do not think the right of self-government is what was intended. I remember that those rights were placed in the Charlottetown Accord. Up to the time that the Charlottetown Accord was written, governments assumed that those rights were not there. They must have, otherwise, why would they have included those rights in the Charlottetown Accord?

I am worried about the future because I know what the present has done with the past. That is my concern.

If I am correct, the wording of the Nisga'a bill is very close to the Charlottetown Accord. The Canadian people and every Indian reserve in Canada rejected it. First, I do not follow the logic of the argument of 1982-83, that this is what was meant, the treaty grew, then it stopped and then we had the Charlottetown Accord. The people rejected it, it grew again and now it comes back to us based on something that happened in 1982 and was rejected in the Charlottetown Accord. That is my concern. I am worried about what future politicians will do on the basis of this particular agreement.

**Senator Austin:** Honourable senators, I should put on the record my observation with respect to Senator Tkachuk's comments.

Bill C-9 is within the parameters of paragraph 45 of the Charlottetown Accord. The premiers and the Government of Canada sought to provide specific drafted legislation giving self-government to aboriginal communities under certain circumstances. That accord failed, famously, for whatever reason. Historians will debate that for some time. I do not think

the reason for its failure can be attributed to paragraph 45 in any reasonable or logical way.

I was not a part of the discussions creating the Charlottetown Accord or the agreement between the federal and provincial governments. With respect to the Charlottetown Accord, Senator Murray was there and, perhaps, could give us the best evidence of the intention at the time.

I was told that it was "for greater certainty." I was in the cabinet of former prime minister Trudeau from 1980-81. I spent six months on the joint Senate and House constitutional committee which, as I said before, was co-chaired by now Senator Serge Joyal.

I understood that paragraph 45 would create a foundation for the aboriginal community in order that their position in Canadian society would be more constitutionally protected. I have spoken to former prime minister Trudeau within the last few months about Bill C-9 and he is delighted with it.

**The Hon. the Speaker pro tempore:** Honourable senators, Senator Austin's speaking time has expired.

**Senator Austin:** Honourable senators, I seek leave to extend my time in order to answer any remaining questions.

**The Hon. the Speaker pro tempore:** Is leave granted, honourable senators?

**Hon. Senators:** Agreed.

**Hon. Herbert O. Sparrow:** Honourable Senator Austin referred in his speech to the polls that were taken in British Columbia. He stated that the results indicated that British Columbians were in favour of the agreement. Can the senator elaborate on those polls, when they were taken and what the results were? The polls that have crossed my desk would not support the statement that the senator has made.

I then have another question. Does the honourable senator want me to ask all my questions now?

**Senator Austin:** I may not do justice to the honourable senator's second question if I do not answer the first one. Perhaps I could say that I do not have the polls at hand, but I will get them.

When the agreement was announced by the two governments and the Nisga'a tribal council, there was a positive poll. My recollection is that roughly 54 or 55 per cent of respondents were in favour of the agreement. By the time the British Columbia legislature finished the debate, popular opinion had declined by about 8 or 9 per cent.

I will look for those polls.

**Senator Sparrow:** There is a difference between the time the initial proposal was made and the final agreement was made. The people would have had an opportunity to look more closely at the final agreement. That would be helpful.

The senator also stated that there was a great predominance of evidence that this was not a constitutional change. I think that is what he said in his remarks.

**Senator Austin:** No, I did not say that. I said there was a great predominance of evidence from constitutional experts who appeared before the committee that Bill C-9 was constitutional and that government provisions would be protected by section 35 of the Constitution Act, 1982.

**Senator Sparrow:** Can Senator Austin provide a list indicating which witnesses were invited to appear and were accepted and those witnesses who applied to appear before the committee?

**Senator Austin:** I do not understand the question.

**Senator Sparrow:** The steering committee invited certain people to appear without prompting from individuals. There were people who asked to appear before the committee. I should like to have a list of those witnesses. My reason for asking is that it is easy to obtain a predominance of witnesses to favour a certain belief, if that is what one wants, in a particular case.

• (1640)

I am aware that some witnesses were refused invitations to appear before the committee, for whatever reason. There might very well be a difference in the preponderance of the witnesses who have appeared because of the invitations that were extended.

**Senator Austin:** The honourable senator is entitled to his opinion. My view — and I think it is the view of all members of the committee — is that we heard relevant witnesses on all the issues. There were perhaps four or five witnesses who sought to come, and it was the view of the steering committee that their evidence would not likely address directly the issues in Bill C-9 or that they simply would repeat the evidence that other witnesses had already given.

I can tell honourable senators, for example, that Kerry-Lynne Findlay, Q.C., who represents the Musqueam leaseholders in Vancouver —

**Senator St. Germain:** She lives there.

**Senator Austin:** — sought to appear. I had a discussion with her. She wanted to give evidence quite similar to that which she gave when Bill C-49 was before the Senate. It was essentially to argue that an aboriginal government could be very arbitrary about the way in which it used its powers. That evidence is on the Senate record under Bill C-49. I discussed the matter with her and she agreed not to appear.

There are others. If my honourable friend has names, I would gladly tell him the reason for the decision we took not to invite other witnesses.

**Senator Sparrow:** Honourable senators, I should like clarification from the Honourable Senator Austin. I asked him for information about those people who were invited to attend the committee hearings by invitation and those who had applied directly to appear. Can he do that?

**Senator Austin:** I will ask the Clerk of the Committee to give my honourable friend three lists: those whose appearance the committee initiated; those who were invited because they expressed interest in appearing; and those who, in the latter category and in the former category, were either not willing to appear or were not invited to appear.

**Hon. Noël A. Kinsella (Deputy Leader of the Opposition):** Honourable senators, first and foremost, I wish to congratulate all members of the committee for the assiduous and thoughtful work they did on that committee with a very complex and difficult piece of legislation, resting as it does on a very complicated and, in many ways, pioneering treaty. To Senator Austin and his colleagues, I express the appreciation of the whole house that the committee was able to do that kind of detailed work. However, I have a couple of questions for the Honourable Senator Austin.

First, what is the view of his committee as to the repeatability of Bill C-9, should it become a statute of the statutes of Canada?

**Senator Austin:** Honourable senators, as I said in my address, Bill C-9 is protected by the provisions of section 35. By the word "repealability", does Senator Kinsella mean vacate the whole agreement, or does he mean changes with respect to some provisions in the agreement? Could he clarify that for me?

**Senator Kinsella:** Should the bill presently before us be adopted by Parliament and therefore become a statute, can that statute be repealed?

**Senator Austin:** My answer is no. This Parliament, by itself, could not change the legal enforceability of Bill C-9, nor could the legislature of British Columbia. Incidentally, it could not be repudiated by the Nisga'a themselves.

The one constitutional method that exists for removing Bill C-9 from law is a constitutional amendment under the provisions of the Constitution Act. That would have to be done by the federal Parliament and the legislatures of seven provinces representing more than 50 per cent of the population.

**Senator Kinsella:** Honourable senators, if we are dealing with a unique legislative proposal that speaks to the virtual annihilation of that part of the principle of parliamentary supremacy that remains since the Constitution Act of 1982, does it not stand *mutatis mutandis* that we must be absolutely certain — that is to say, we must have a higher degree of certainty — that the legislation we adopt in this house would be constitutionally pure, if not constitutionally as secure as is humanly possible?



I have not read all of the presentations submitted by the witnesses and then examined by the honourable members of the committee, but I did read the written submission of former justice Estey. In fact, I read it three or four times. What I read the former justice saying was that this bill, should it become law, would be unconstitutional. That shook me. I am quite concerned because now Senator Austin has just told us that this bill would be non-repealable. Did the honourable senator's committee examine that question? If so, how has he come down on the principle of the degree of certitude or the degree of perfection that this house must satisfy itself has been achieved when we are to pass a piece of legislation that, to use his words, will make the repeal of this law only possible through a constitutional amendment?

**Senator Austin:** I thank the honourable senator for that question.

Under the provisions of the bill and the Nisga'a Final Agreement, any part of it that is found to be unconstitutional will be set aside but the rest of the agreement will stand. The part that is found to be unconstitutional will, therefore, be the subject of further negotiation amongst the parties. I do not believe that a horrendous event is being created here.

I do agree with Senator Kinsella that this is an important step in constitutional law and practice in Canada and that it is our job in the Senate to be careful to understand what it is we are legislating. We must satisfy ourselves, not perfectly and finally, because that degree of perfection cannot be attained at any time in any place, but, on the balance or even on a preponderance of the evidence that this bill is constitutional. Certainly, I am satisfied on a preponderance of the evidence of the Osgoode Hall "gang" — to use a word that was used earlier — and other evidence that it is constitutional.

However, I should like to add that in the *Sparrow* decision the court reserved unto itself a "living tree" doctrine with respect to the entrenchment of aboriginal rights. I know that my honourable friend is fully aware of that provision. Aboriginal rights will be considered from time to time within the ambit of the times. Thus, there is no absolute aboriginal right; it is a relative right.

With those protections, I believe that we are in good shape with this legislation.

• (1650)

**Senator Kinsella:** I thank the honourable senator for that. Like the honourable senator, I was privileged to participate as an advisor to the Government of New Brunswick during the constitutional discussions of the late 1970s and early 1980s. I have a photograph in my office of Senator Austin and other senators who were involved at that time.

I accept the doctrine of the living tree — the doctrine of growth and openness to principles that were not defined in an essential way by section 35 of the Constitution Act, 1982.

In dealing with aboriginal self-government and being desirous of finding the flesh and bones to make this more meaningful in the early part of the 21st century, did the committee consider that, as opposed to constitutional amendment, it would be more prudent not to seal the box but rather to use techniques such as delegation to allow fine tuning and improvement through a more accessible approach within Parliament?

**Senator Austin:** We heard evidence and discussed the questions of delegated power and constitutional protection. We looked at the nub of the agreement on this issue, that being the insecurity that any party in the position of the Nisga'a would feel given the history of treatment by legislatures of their community and other aboriginal communities over the last 100 years. Earlier, I mentioned the deprivation of the aboriginal community in British Columbia of even the most fundamental right of access to the courts. In this case, much was negotiated and much was traded at many levels to reach this complicated agreement. It was found desirable by the federal and provincial governments to give the Nisga'a the protection of certainty with respect to this agreement — certainty, with the reservations I have already mentioned regarding the way in which the agreement can be changed, amended or renegotiated.

I endorse that provision very strongly. I have no hang-up with respect to the division of powers between sections 91 and 92. We took that decision in 1982. Some want to repeal section 35. They want to argue from propositions that start without acknowledging its existence.

With respect to the final point Senator Kinsella made with regard to former justice Estey, his argument was that we do not know, that the bill is momentous and that we should send it to the court. However, as was pointed out in the evidence, Parliament is the highest court in Canada and it is our job to decide.

**Senator Lynch-Staunton:** What about the Supreme Court?

**Senator Austin:** Parliament is the highest court in Canada, in spite of Senator Lynch-Staunton's view.

I believe that we will act in the public interest by passing this legislation. If there is a constitutional provision to be set aside, which I do not believe will happen, we have a process for that.

**Senator Murray:** May I pursue this line of questioning after Royal Assent?

**The Hon. the Speaker pro tempore:** Honourable senators, it is now five o'clock and Royal Assent is scheduled to occur at this time. The Speaker will be back in the Chair after Royal Assent, and he will decide whether there will be more questions.

**Senator Kinsella:** What do you mean "he will decide"? The Senate will decide.



**Hon. Dan Hays (Deputy Leader of the Government):** Honourable senators, we have agreed to suspend the sitting for Royal Assent at five o'clock.

This is a fascinating and extraordinary exchange. I do not believe that any other senator on the other side intends to speak today. Am I correct?

**Senator Lynch-Staunton:** We have questions for Senator Austin.

**Senator Hays:** In an attempt to accommodate the business of the chamber, I suggest that we adjourn this matter as it stands and that when this order is next called we continue this productive and important exchange. We were hoping to reach a few other items on the Order Paper, and this arrangement would accommodate that as well as Royal Assent.

**Senator Kinsella:** As all honourable senators know, the opposition is always accommodating, understanding and generous beyond words. Senator Austin has been forthcoming in helping us to understand the evidence heard by he and his colleagues on this very important matter. I have not read all the testimony that our colleagues on the committee heard. Many issues arise to which only the chairman of the committee can respond. He has presented the report and has spoken to it, and we have many questions to ask.

If the Deputy Leader of the Government is proposing that rather than continue this discussion after Royal Assent we resume debate on Bill C-9 on Tuesday, we would be agreeable to that.

**Senator Hays:** Thank you. Therefore, when this item is next called on the Orders of the Day, we will continue with questions to the first speaker at third reading.

Is that agreeable, Senator Austin?

**Senator Austin:** Honourable senators, my first obligation is to sponsor this bill. I will be back in my chair on Tuesday. If colleagues send me their questions in the interim, I would be able to expedite the answers. I do not claim all knowledge on this complicated legislation. I am doing my best as an amateur to explain it. I will go to the experts with respect to some of the questions already asked, and it would be helpful to have advance notice of further questions.

**Senator Hays:** As Senator Austin does not object to our agreement, if all other senators agree, I propose that we suspend the sitting and proceed thereafter with Order No. 2 under Government Business.

[Later]

**The Hon. the Speaker:** Honourable senators, the agreement, then, is that the questioning of Senator Austin has been completed and that honourable senators are prepared to proceed to other items on the Order Paper.

**Senator Hays:** Honourable senators, when Bill C-9 is called on the Order Paper at the next sitting of the Senate, we have agreed to return to the stage we were at when the sitting of the Senate was suspended. Senator Austin has graciously agreed to be here at that time to continue dealing with questions of honourable senators.

**The Hon. the Speaker:** Honourable senators, is it agreed?

**Hon. Senators:** Agreed.

Debate suspended.

The Senate adjourned during pleasure.

[Translation]

• (1710)

## ROYAL ASSENT

The Honourable Ian Binnie, Puisne judge of the Supreme Court of Canada, in his capacity as Deputy Governor General, having come and being seated at the foot of the Throne, and the House of Commons having been summoned, and being come with their Deputy Speaker, the Honourable the Deputy Speaker of the Senate said:

I have the honour to inform you that Her Excellency the Governor General has been pleased to cause Letters Patent to be issued under her Sign Manual and Signet constituting the Honourable Ian Binnie, Puisne Judge of the Supreme Court of Canada, her Deputy, to do in Her Excellency's name all acts on her part necessary to be done during Her Excellency's pleasure.

*The said Commission was read by the Clerk of the Senate.*

The Honourable the Deputy Governor General was pleased to give the Royal Assent to the following bills:

An Act to amend the Criminal Records Act and to amend another Act in consequence (*Bill C-7, Chapter 1, 2000*)

An Act to amend the Criminal Code (flight) (*Bill C-202, Chapter 2, 2000*)

An Act to amend the Act of incorporation of the Board of Elders of the Canadian District of the Moravian Church in America (*Bill S-14*)

The Honourable Peter Milliken, Deputy Speaker of the House of Commons, then addressed the Honourable the Deputy Governor General as follows:

May it please Your Honour:

The Commons of Canada have voted certain supplies required to enable the Government to defray the expenses of the public service.

In the name of the Commons, I present to Your Honour the following bills:

An Act for granting to Her Majesty certain sums of money for the public service of Canada for the financial year ending March 31, 2000 (*Bill C-29, Chapter 3, 2000*)

An Act for granting to Her Majesty certain sums of money for the public service of Canada for the financial year ending March 31, 2001 (*Bill C-30, Chapter 4, 2000*)

To which bill I humbly request Your Honour's assent.

The Honourable the Deputy Governor General was pleased to give the Royal Assent to the said bills.

The House of Commons withdrew.

The Honourable the Deputy Governor General was pleased to retire.

[English]

• (1720)

The sitting of the Senate was resumed.

### VISITORS IN THE GALLERY

**The Hon. the Speaker:** Honourable senators, before we proceed to other business, I should like to call to your attention some special guests in our gallery. We have a number of members of the other place, notably Mr. Dan McTeague, who is the sponsor of a special bill that we passed today.

Mr. McTeague has with him some guests who have a particular interest in the bill. They are Mr. Cid Bowman and Ms Karen Kalvereda, the father and sister of a police officer from the Toronto region who was killed while in public service.

Accompanying Mr. McTeague are other members of the House of Commons. They are Albina Guarnieri, Joe Jordan, and some others.

[Translation]

We also welcome Raymond Bonin, the Member of Parliament from Sudbury, and Senator Marie-P. Poulin, representing the region of Sudbury. Today, they invited members of the family of the police officer killed in the line of duty.

[English]

We have with us as well Mrs. Corinne Fewster-MacDonald, the wife of a police officer from the Sudbury region who was killed in service, along with members of her family.

As well, we have a group of police officers from the Association policière de la région de Sudbury who have come all the way from Sudbury for this special occasion.

**Hon. Senators:** Hear, hear!

**The Hon. the Speaker:** On behalf of all honourable senators, I wish you welcome here in the Senate of Canada for this important event.

### BILL TO GIVE EFFECT TO THE REQUIREMENT FOR CLARITY AS SET OUT IN THE OPINION OF THE SUPREME COURT OF CANADA IN THE QUEBEC SECESSION REFERENCE

#### SECOND READING—DEBATE CONTINUED

On the Order:

Resuming debate on the motion of the Honourable Senator Boudreau, P.C., seconded by the Honourable Senator Hays, for the second reading of Bill C-20, to give effect to the requirement for clarity as set out in the opinion of the Supreme Court of Canada in the Quebec Secession Reference.

**Hon. Joan Fraser:** Honourable senators, I had not intended to speak on Bill C-20 until later in the process, and it is still my intention to do so. However, it occurs to me that there are a few remarks that may be worth making now.

[Translation]

I listened and I will continue to listen with great interest to the legal arguments, which are extremely important. We are lawmakers and we may never, in the Senate, have to consider more important legislation. This bill deals, after all, with the possibility of secession by a Canadian province and this possibility is very real, though not immediate.

It seems to me that before even considering the legal aspect of the bill, we have to recognize that this is a deeply political issue, in the noblest meaning of the term. It is this aspect that I want to discuss today.



Yesterday, the Leader of the Opposition appropriately reminded us that Quebec is not the only province that has experienced secessionist movements. Nova Scotia experienced some and, more recently, such movements have also emerged in western Canada. However, it is in Quebec that the movement is the strongest. And since Quebec is the province I represent, I hope you will forgive me if I speak primarily from a Quebec perspective.

Honourable senators, in the spring of 1968, on April 20 to be precise, I was a young journalist attending the first convention of the Sovereignty Association Movement, which would later become the Parti Québécois. This was a turning point in our history.

[English]

Honourable senators, think about what was going on in the world in 1968. That spring there were riots across the Western World. Paris was the scene of an uprising that would topple a giant, Charles de Gaulle. In the United States, cities were burning, inspiring leaders were being assassinated, a president was being rejected, and his party could choose a successor only behind armed guards, while outside in the streets the youth of the nation battled the police.

Around the world, from Ireland to Vietnam, violence seemed to be the preferred way, sometimes the only way, to settle social or communal differences. While the world raged, what were we in Canada doing? We were choosing the peaceful way, the way of democracy, of politics. I believed then, and I still believe passionately, that preserving the unity of Canada is a great cause worth dedicating one's life to. I believe with equal passion that it has to be done democratically, politically.

[Translation]

I sometimes think that separatists do not realize what a huge compliment they paid Canada the day they decided to conduct their battle along strictly democratic lines. The decision was not self-evident at the time. Some people had already taken the other route. We had bombs, riots, the October crisis. It must never be forgotten that French-speaking Quebecers had real grievances. We did not even have the Official Languages Act, to give just one example.

Yet René Lévesque and his colleagues were confident that, if they founded a democratic movement, Canada would recognize its legitimacy and would also play by democratic rules, and Mr. Lévesque was right. Canada allowed a secessionist party to be created and elected and to form a government in its province, and let it hold a referendum on secession in accordance with provincial laws without federal interference or control. Canada allowed this series of events to take place not once, but twice, and Canada is prepared to do so a third time if that is what Quebecers want.

[English]

Honourable senators, find me another great country that would do as much. It would not be the United States, where they fought a bloody civil war to prevent secession. It would not be France, whose constitution states flatly that France is one and indivisible. It would not be the vast majority of countries on the face of the earth.

I think the way we do it is the way it should be done. A country does not exist by some act of divine law. A country exists because its people want it to exist — that is its only moral basis for being. If part of its population truly wishes to leave, then they clearly have the fundamental right to do so. Canada is not a prison. I take it as a point of immense national pride that, collectively, we have accepted that fundamental principle.

Of course, if it comes down to it, the departure must be done lawfully. However, if it comes to that, the first job of legislators on both sides will be to ascertain the true public will, the true public conviction, and then to respect it. This imposes some disciplines on politicians on both sides. The first of these, I suggest, is the obligation on both sides to be clear as the voters prepare to make their momentous decision.

The Supreme Court's decision makes it plain that the secessionist side has an obligation of clarity: an obligation to put a clear question and to get a clear majority in response. These are not academic points, honourable senators. We know that there has been a substantial lack of clarity in the minds of a significant proportion of the people of Quebec at times in the past when they have been called upon to make this momentous decision. It is our duty as Canadians, and as Quebecers, to fight to achieve clarity. Since democracy depends on fully informed voters, that means, as I say, that both sides must be clear.

• (1730)

In essence, politically, Bill C-20 is a recognition of that obligation on the federal side — the obligation we have to Canadian citizens, and particularly to those who live in the province considering secession. This bill is the most formal statement possible of the way the federal side will conduct itself, should we ever again face a referendum on secession. It adheres scrupulously to the democratic process. It does not prevent the secessionist side from asking whatever question it wants. The questions that have been asked in the past could be asked in the future.

This bill does not set out any rules for the conduct of any referendum in Quebec or anywhere else. It does, however, set out the process by which the federal side would determine whether it should, indeed, enter negotiations about the terms of secession, or whether it should decide that the will of the people to secede was not sufficiently clear to justify entering negotiations — another momentous decision, but one surely requiring a maximum of clarity.



Honourable senators, this bill establishes that process now, ahead of time, so that the voters, if the time comes, may be fully informed. Surely this is better. Surely acting now is better than waiting until the last moment — until a referendum is again upon us and our action might be or be seen to be influenced by panic.

This is not, of course, the only way the federal side could have addressed its obligation to be clear. I think we are all familiar with the various suggestions that have been made for alternative approaches, and we could all probably envisage more ourselves if we set our minds to it. This, however, is a completely legitimate approach. It offends the rights of no one, and it asserts the rights of all Canadians. We should bear in mind that this approach comes from a government that has itself gone through one referendum campaign in scrupulous respect of the democratic process, and whose leader, the Prime Minister, has had longer and more direct experience in this field than any federalist politician in Canada. The Prime Minister has listened to advice from many quarters and, on the strength of that long experience, he believes that this is the best rule to follow. I believe that decision merits the greatest respect.

Bill C-20 does not, of course, absolve the federal government of its fundamental continuing responsibility to provide government that serves the interests and concerns of all Canadians, including those living in provinces with secessionist movements. Indeed, the best way to fight secession, surely, is to speak and act in such a way that Canadians continue to know that they live in what truly is — and any of us who have travelled know that it is — the best country in the world.

Nor does this bill absolve the federal government or, indeed, all federalists, including those who sit in this chamber, from campaigning vigorously for Canada whenever that is needed. Bill C-20, however, addresses the obligation to be clear about how we shall act if we ever again do get to that painful point of imminent possible secession. That clarity is surely in the interest of all Canadians.

Honourable senators, I should like to say a little about one other topic that has caused many of us to reflect carefully, and that is the role of the Senate in the process established by Bill C-20. Here again, there have been and will be rigorous legal arguments. The Leader of the Government in the Senate led the way last week, and others will continue that process. Once again, I would like to think for a moment about the underlying political quality of the issue. I should like to say, as a senator and as an English Quebecer, I take very seriously the Senate's responsibility to represent regions and minorities in Canada. I believe the way the Fathers of Confederation established the Senate's representation in Quebec makes it very plain that that role was, if anything, intended to be even stronger in the case of Quebec than in the other provinces. As a member of a community that would be gravely affected if Quebec seceded, I cannot ignore that responsibility.

Honourable senators, I think also of the nature of our democracy, of the nature of the parliamentary system that has served Canadians so well and continues to do so. The Senate has

powers that in almost all cases are equal to the powers of the other place. We take those powers seriously, and we attempt to exercise them in the best interests of Canada. Even where our power is clear, and the subject at issue is vital, we tend to act along the lines of what is known as the Salisbury Doctrine, because it was first enunciated by the fifth marquess of Salisbury, who said that it be would be constitutionally wrong for the upper house to oppose proposals which had been put before the electorate and approved by the electorate. We do not block the clearly expressed popular will, even in matters where, in law, we have the power to do so. Then there is the class of matters where we did not have that power — a class that is so fundamentally political that it is the exclusive prerogative of the House of Commons, the chamber of the people's elected representatives.

Essentially, that class consists of the two most basic elements of democratic government: The decision about who shall form the government, and the power of the purse. I find myself, however, powerfully affected by the argument that the focus of Bill C-20, the government's approach to the possible secession of a province of Canada, is another such subject, something that is so fundamentally, inherently political, so directly and intimately bound up with the will of the people, that it, too, falls into that small but crucial class where it is the House of Commons and not Parliament as a whole that must take the decision and, of course, bear the responsibility for doing so.

This does not mean that the Senate has no role. In this case, perhaps more than in any other, we would bear a heavy responsibility to exercise the rights that, although in a different context, were summed up in a famous phrase: We have the right to be consulted, to encourage and to warn. Bill C-20 does allow for the exercise of that right.

We may wish — I expect we all wish — that the bill had been drafted more explicitly on this aspect, but the recognition is there. If we choose to express our view on the clarity of either the referendum question or the referendum result, the House of Commons must take our view into account.

**Senator Lynch-Staunton:** "Shall" not "must".

**Senator Fraser:** I think that we may take it for granted that the Senate, starting perhaps with the Leader of the Opposition, would indeed express its view with all possible vigour. If we did not, we would be failing in our duty, and I know we would not fail in our duty. We do have a perspective that is different from the perspective of the other place, and it would be important for us to speak clearly and loudly.

**The Hon. the Speaker *pro tempore*:** The honourable senator's speaking time has expired. Is leave granted that she may continue?

**Hon. Senators:** Agreed.

**The Hon. the Speaker *pro tempore*:** Please proceed, Senator Fraser.

**Senator Fraser:** Honourable senators, I am seriously impressed by the argument that the ultimate decision is the prerogative of the other place.

[Translation]

Honourable senators, many senators have years of political experience; I do not. Many have legal expertise, which I will never have. Almost all of you have more experience in the Senate.

The reason I dared to share some of my thoughts today is that, in my own way, I have been involved in the national question for over 30 years. I have given it much thought. I have learned lessons that were sometimes hard. My democratic principles have guided me during all this time. They are at least as relevant today as they were in the past.

[English]

**Hon. Noël A. Kinsella (Deputy Leader of the Opposition):** Would the honourable senator take a question?

**Senator Fraser:** Yes.

**Senator Kinsella:** With reference to the honourable senator's remarks concerning the current non-determinative role of the Senate of Canada, has she in her reflections on this matter considered some of the ways in which the bill could be amended to very easily accommodate both the desire of the Prime Minister not to have this process held up in terms of time, and, second, to meet the very serious obligations before us in this house? In fact, I suggest there is the historic obligation to secure the consent of this house as a part of the consent of Parliament. For example, has the honourable senator considered simply moving an amendment to the bill whereby it would be for the House of Commons and the Senate to determine the clarity of the question or the clarity of the majority, and specify that it be done through a joint committee of the House of Commons and the Senate?

• (1740)

**Senator Fraser:** Honourable senators, I have considered that. Like most senators, my emotional preference would be for us to be involved as closely as possible. However, I become concerned when I think about the details of how such a change would work. I can envisage many circumstances in which the Senate — and, who knows who the inhabitants of the Senate might be at that time; we are not necessarily talking about the honourable and estimable senators now sitting — if it were involved in the House of Commons process, might end up blocking a decision, depending upon the composition of the House of Commons. We have no guarantee that, if it came to that, we would have a solid

government of any party in the House of Commons. Indeed, one may suspect that it would be at a time when the House of Commons was in some disarray that the government of a secessionist province might see its moment to move. I am not sure that it would be practically desirable to build in such a shift.

**Senator Kinsella:** Based on that answer, has the honourable senator given thought to another model which would also address the concerns that she just raised, that is to say, that each house shall make a determination within six sitting days of the commencement of the process?

**Senator Fraser:** We are perfectly free to make a determination as quickly as we wish, should it come to that — and we all devoutly hope it will not. I repeat that I find myself stumbling each time over the notion that, if our consent is required and if our voice must give assent to whatever it is that the House of Commons is doing, that does give us a blocking role. I am powerfully impressed by the argument that this, in the end, is a decision that must be taken by the other place.

We would have to speak clearly about what we thought they were about to do. If we disagreed with what they were to do, then it would be our duty to go to the people and try to persuade them to put pressure on their elected representatives in any way we could and in any way that was available to us. However, in terms of the role of Parliament, I find myself powerfully swayed by the argument that this is one of the very few cases where the decision must be theirs.

**Senator Kinsella:** The second preambular paragraph of the bill says that the break-up of a country — and, in this case it is Canada that they are talking about — “is a matter of the utmost gravity.”

If the Senate of Canada does not have a determinative role in the process that deals with matters of the utmost gravity, what impact does that have upon matters of less than utmost gravity that also come before this place?

**Senator Fraser:** With respect, I do not think it has any impact at all. There are various kinds of subjects that can be considered to be of the utmost gravity. Clearly, ones that have a legal component, as an eventual constitutional amendment would have, rightly must come before us. It is my view — and, it has been my view for many years — that this key significance is primarily political and from that flows the reasoning that I tried to outline, perhaps inadequately, in my remarks.

**Senator Kinsella:** Does the honourable senator agree that this bill, if it becomes law, will establish, for the first time in Canada's 133-year history, a statutory legal means which, if followed, will provide for the legal breakup of Canada?



**Senator Fraser:** This bill does not provide for the legal breakup of Canada. This bill provides for a determination of a political process, the end result of which, if it came to that, would be a constitutional amendment that would be brought before us. That is what would provide for the breakup for Canada.

I do not, however, think it inappropriate for us to contemplate, in this place, the possibility that we may find ourselves engaged in that process. We have found ourselves very nearly engaged in that process already. The federal side — and this would have been true of whatever federal government was in power — had nothing to fall back on. That is to say, it had no instrument or route map to follow, had the result of the 1995 referendum gone the other way.

The then government of Quebec had a very detailed plan about what it should do. It did not really need a whole lot of prior legal arrangements because it had just one legislature with which to deal. The federal side, on the other hand, had not only Parliament to take into account but also the undoubted state of great concern in all provinces outside Quebec.

This is a very legitimate way to begin the process of saying — that is, if it comes to the point where we will have to ask Parliament to legislate on the secession of a province — “Here is the beginning of the process that everyone will know we will be following.”

**Senator Kinsella:** In the final paragraph in the advisory opinion of the Supreme Court — that is, in the opinion upon which the bill and the proponents of the bill tell us this bill is based, namely, paragraph 155 — the court also tells us that, notwithstanding what it said before about this process, which is similar to the one that Bill C-20 envisages, unconstitutional or illegal declaration of independence could occur.

Is that the same kind of situation to which the honourable senator was referring as that Mr. Parizeau articulated a couple of years ago? More importantly, if the Supreme Court tells us that UDI is still a possibility, how does this bill help?

**Senator Fraser:** I do not have what is known as Mr. Parizeau's plans in front of me. My recollection of them is that he was planning to move very quickly if he got a 50 per cent plus 1 majority in his referendum, despite the confusion in the mind of some voters. He was moving very quickly to create facts on the ground — that is, the kind of things that were addressed in the Supreme Court discussion on effectivity, among other things. He was planning to seek recognition, if not of independence, at least of the inevitability of independence from foreign governments. He also had great financial plans for intervention

on the markets, although that does not concern us here.

I think he was trying to create a situation in which, around the world, it would be seen as inevitable that Quebec would, very rapidly, become independent as a result of that vote. Thus, the Government of Canada would be backed into a corner where it had no option but to negotiate quite rapidly. I may be wrong, but that is my impression of what Mr. Parizeau was intending to do.

Could I ask Senator Kinsella to repeat his second question?

**Senator Kinsella:** In paragraph 155 of the advisory opinion of the Supreme Court, the court opines that, notwithstanding what they had said before, “a unilateral, unconstitutional, illegal declaration of secession is still a possibility.”

• (1750)

The court has told us, in black and white, that a UDI secession is still a possibility. If it is still a possibility, then of what benefit is this law?

**Senator Fraser:** Senator Kinsella will recall that I noted that I am not the member of this chamber with the greatest legal expertise. However, in my reading of the Supreme Court opinion, it warns that the failure of the federal government to negotiate in good faith following a clear majority response to a clear question would be one of the grounds upon which a unilateral declaration of independence might succeed.

I do not believe any senator in this chamber wishes to see a unilateral declaration of independence. The utility of this bill is that it demonstrates clearly, ahead of time and for all parties to be aware of, that, if it came to that, the federal government would, as the Supreme Court has said it would have to do, negotiate in good faith, but only under conditions of democratic certainty about as to the true will of the citizenry. In other words, this bill would greatly diminish the possibility of finding ourselves confronted with a UDI.

**Hon. Lowell Murray:** Accepting the stated purpose of the government that what is important is to have a clear, legal framework for any possible secession negotiations, why does my honourable friend suppose that the terms of reference provided to the court were so limited? Why does she suppose that the lawyers for the Attorney General of Canada specifically told the court not to pronounce itself on the question of what amending formula would be applicable to secession? Why does she suppose that the lawyers for the Attorney General of Canada told the court not to pronounce itself on the rights of the aboriginal peoples of Quebec, notwithstanding the fact that representatives of those peoples put forward a very strong case to the court that there could be no change in their status vis-à-vis the federal Crown and Parliament without their consent?



**Senator Fraser:** As Senator Murray knows, I was not a member of Parliament, nor was I an advisor to the government when its position before the Supreme Court was being drafted. I cannot possibly tell him why they made the decisions they made. I observe that if one were going to the Supreme Court on a matter of such immense gravity, one would want clarity of opinion. One would have to take into account the fact that one hoped gravely that this opinion would not actually come into play any time soon, perhaps not for generations, and that circumstances — for example, the status of aboriginal peoples, as the debate earlier today suggested — can change dramatically from now to then. Therefore, one would wish to have the Supreme Court confine itself to the very heart of the issue in question. However, I do not know if that was their reasoning. The honourable senator might have a chance to ask that question when the bill reaches committee.

**Senator Murray:** If I get the opportunity, I will certainly do so.

I have one other question. My honourable friend would be justified in declining it as hypothetical, but I think it is pertinent.

The intent of this bill is to ensure, so it seems, that the federal government will not negotiate the secession of a province unless there has been a clearly expressed will on the part of the people of that province to secede. If in the next referendum the Government of Quebec asks the people to give it a mandate to negotiate "a new association with Canada," will the provisions of this bill kick in? Will Parliament then be called upon to decide whether that question is clear? On the basis of such a question, if the Government of Quebec were to achieve a large majority, what advice would the honourable senator give to the federal government? Should it go to the negotiating table? Should the federal government tell them to get lost? Should the government call a referendum of its own? What advice would the honourable senator give to the government under those circumstances?

**Senator Fraser:** The future holds too many variables to know what humble advice I might proffer should anyone be interested in having it.

However, in connection with my honourable friend's cleverly worded question, it would seem the first order of business would be to determine, as clearly as possible from the debates in the National Assembly and from any other available information, whether the association sought would, in fact, constitute some form of re-association after secession or whether it would constitute some form of rearrangement within Confederation. Clearly, that determination cannot be addressed in a bill such as this because there is an infinite number of potential answers. We would have to wait upon the day.

[Translation]

**Hon. Gérald-A. Beaudoin:** The government could have not passed any legislation, and merely used the Supreme Court opinion. It exercised its prerogative to express its point of view.

It could have chosen the route of a statement by the Prime Minister and his cabinet. It could have chosen the legislative route, and that is what it did.

It is perfectly entitled to do so. Senators are going to vote on this bill. We can vote in favour, or oppose it. However, if the bill is passed, the government will have to heed the House of Commons. I cannot understand why it would not heed the Senate, which is on an equal footing with the House of Commons legislatively. Why are MPs' opinions sought, but not senators'? We may be consulted, but no more.

Why would the Senate not also be entitled, as a legislative chamber — we are also part of Parliament — to pass a resolution on this? We are going against the principle of the equality of the two Houses.

**The Hon. the Speaker *pro tempore*:** Honourable senators, I am sorry to interrupt, but it is six o'clock. Do I have the permission of the Senate not to see the clock?

**Hon. Senators:** Agreed.

[English]

The question is simple. If one has chosen the legislative path, one must follow the principles of the legislative power of the state.

• (1800)

The legislative power of the state at the federal level is composed of two Houses. It is so true that if we vote against this, the bill will be killed. The Senate could, however, pass the bill and then, later, consider what we have done, but they are not obliged to do so. It is the sole responsibility of House of Commons to tell the government that it should not negotiate because the question is not clear. The government has the obligation to heed the opinion of the House of Commons. The government has the choice to act alone because the government is the executive, or it may choose to involve Parliament, but Parliament is composed of two Houses.

I do not understand why one house is so privileged at an important moment in our history, and the other is not. It is a complete mystery to me. If it is a question of time, the Senate can sit within 30 days and come to a conclusion within 30 days. Why not?

**Senator Fraser:** Honourable senators, this is what I was trying to address, obviously not with total persuasive power, in my initial remarks.

It seems to me that there is a very strong argument that, when we get to that day, in fact, it is the role of the other place to make the decisions.

**Senator Beaudoin:** Uniquely?

**Senator Fraser:** Yes. I think that it is a remarkable sign of deference to the whole of Parliament that the government has chosen to take this legislative step to establish that principle for the future. It might have chosen only to have a resolution in the House of Commons, and nothing we said or did could have stopped that. I am referring to a resolution now, containing the essence of Bill C-20. We would not have had a word to say about that. However, we do have a word to say about it. We have already had words. I listened to the leader's speeches. They are of wonderful quality. Listening to the grilling I am getting here, I can tell that this entire debate will be of very high quality. We are, in fact, involved at this point. However, if we pass this bill, we will acknowledge, and in my view probably correctly, that it is, in the end, the other place that will have to make the decision if it comes to that.

Why do anything at all now since the Supreme Court has given its opinion? I must say that when that opinion came down, I thought, "That is it. The matter is settled, and we need do nothing more." When I listened to the first responses from the Government of Quebec, I was encouraged in that view, but then last fall we started hearing from the relevant minister in the Government of Quebec, not once but repeatedly, that they were not bound by and would not respect the opinion of the Supreme Court on this matter. I think at that point, there was a duty incumbent upon the Government of Canada to respond, and this is the response it has chosen to make.

**Senator Beaudoin:** Remember the case of the "particular status for Quebec", and remember the case of the "four vetoes". They asked this beautiful Senate to say yes or no. We made a resolution, and I voted for that resolution. The Senate was involved.

If you do not want the Senate to be involved, you must follow the Constitution. If you want to erode one power of the Senate, you cannot do it by a simple statute. You must do it by a constitutional amendment. In 1982, we lost our absolute veto in constitutional matters, but that was a decision of those who were amending the Constitution. It was a constitutional amendment, not a statute. How can you change the parliamentary system by a simple statute? I see no precedent for that in our parliamentary history.

Just the other day Senator Boudreau spoke about the question of timing. The Senate certainly has as much time in this house to do it as do members of the House of Commons. There are 304 members, and here we are only 105 senators. I think we can act within the same time frame as the House of Commons.

Again, it was up to the government to say, "Since we are the cabinet, since we are the executive of this country, we will do it alone." I have the greatest respect for that, and we have done that for more than a century. Now we want to change it. I have no objection, providing we follow the principles of the Constitution.

**Senator Fraser:** It is very difficult to take on Senator Beaudoin on matters of constitutional principles. However, let

me offer the cautious observation that I do not think that the Senate has ever had any power to influence, ahead of time, a decision about whether or not a government would enter into constitutional negotiation. Therefore, we are not losing any power. The House of Commons has had that power indirectly in that it is a confidence chamber. Knowing that the government of the day was embarked upon constitutional negotiations, the Commons could choose to curtail that process by defeating the government, if it wished it to do so. This process strikes me as a variant of that process — a very interesting variant couched to meet changing circumstances.

Not many parliamentary democracies have gone through this exercise. We are indeed trying to respect our past and our principles while facing circumstances that are not common in the history of parliamentary government. I do not think the power of the Senate is eroded in this issue. Its political role may not be all that we might have wished, but that will depend to a great extent on what we make of our political role, if the day ever comes.

**Senator Beaudoin:** I have one word on the vote of confidence. The honourable senator is right: the House of Commons can always have a vote of confidence, but that is not what the bill is saying. The bill is saying, "If the House of Commons comes to the conclusion that the question is not clear and that the majority is not clear, it will have to order the government of this country not to negotiate." This is quite a power. It differs from a vote of confidence. Why do they have that power? They have that power because the statute states that they have that power.

I think it is right, legally speaking, but what I think is wrong is the absence of the Senate at the stage of the negotiations. If the bill gives a power to the House of Commons because it is part of Parliament, it cannot ignore the Senate. That is my argument. It is not more; it is not less.

**Senator Fraser:** Honourable senators, it strikes me that perhaps the key words in that obviously interesting and thought-provoking argument are when the honourable said, "...what I think is wrong..."

**Senator Beaudoin:** That is my opinion. It may be wrong.

**Senator Fraser:** In the end, it comes down to whether we think it is not constitutionally but politically right or wrong.

• (1810)

**Hon. John Lynch-Staunton (Leader of the Opposition):** Honourable senators, Senator Fraser supports the argument advanced by her leader, the Leader of the Government in the Senate, that the Senate's role in the process leading up to a possible secession should be limited because the Senate only has a suspensive veto when it comes to constitutional amendment. Therefore, we are being limited to what I call a consultant in waiting. One clause of the bill states that we shall be consulted, amongst others, but it does not mean that anything we would provide as consultation will even be attended to.



I find that a mystifying argument, one that I certainly do not accept, particularly as when it came to previous constitutional amendments that have come to this chamber since I have been here, the Senate was a full participant in the process. I think of the constitutional amendment that eventually identified or proclaimed New Brunswick as a bilingual province. I think of Term 17. I think of the constitutional amendment that allowed denominational schools to be replaced by a linguistic school system. The Senate of Canada was part of the entire process leading up to that constitutional amendment, to the point of being members on a joint committee with members of the House of Commons.

Now we are talking about the possible constitutional amendment leading to the breakup of the country, and suddenly the Senate, as an essential part of Parliament, is dismissed. I cannot understand the rationale behind that argument. The question is: Can the honourable senator explain it to me?

**Senator Fraser:** Honourable senators, nothing in this bill changes the Senate's role in any way. If we ever get to a constitutional amendment on the secession of a province, the regularly established constitutional and legislative process will come into play at that point and our role will be exactly as it has been.

The honourable senator speaks of our role preceding the presentation of a constitutional amendment. While negotiations are going on, the role of members of either chamber is fairly limited, with the exception that the House of Commons can indeed defeat the government, in which case the negotiations are probably suspended, if not halted. However, the role that we can ever play when any constitutional amendment is in the process of being negotiated will continue. If we want to take our case to public tribunals, we can. If we want to have special committees, we can. If we want to do special studies, we can. Nothing will stop us. Indeed, I would be astounded if we did not do all those things.

**Senator Lynch-Staunton:** But when we were involved in Term 17 and the Quebec school question, we joined with the House of Commons in the consultation, the questioning and the examination of the entire question before the constitutional amendment was put to a vote.

In this case, we are being told that we are not to be part of that preliminary process and that we are irrelevant when it comes to a constitutional amendment because we have only a six-month veto. We can only delay an amendment for six months.

If that argument holds here, why was it not applied in Term 17, when we were involved with the process right from the beginning? Those hearings went on for a long time and were very valuable. Not only was there a joint committee, but, after

that and after the joint committee hearings on the Quebec question, we had our own hearings here. I remember Mr. Dion coming here. I should like to think that the questions asked and the exchanges were valuable.

The end result was that the amendments were obviously going to go through, but at least people had a better idea and a better understanding of what the two amendments, plus the one regarding New Brunswick, involved because of the Senate's participation in the process leading up to their passage. However, in this case we are told that the Senate is irrelevant and is not needed. We are told that when the House of Commons has decided on its own — meaning the Government of Canada — that a constitutional amendment is needed, then they will invite us in. This is not just demeaning to the Senate; I think it is demeaning to the entire parliamentary process. I fail to understand why that process is being accepted and furthered through this bill.

**Senator Fraser:** Honourable senators, I really do differ with Senator Lynch-Staunton on how he sees the process unfolding. I would think that when any element of a constitutional amendment comes before Parliament, the Government of Canada of the day would want to turn to the Senate, given the wealth of constitutional expertise in this chamber. However, nowhere has it ever been written that we must be involved in negotiations, even if we had been on occasions in the past when it was appropriate. Nowhere in this bill does it change what has been written about our role, or non-role, in the actual conduct of the negotiations. All this bill does is set up a political framework whereby the starting political judgment will have to be made.

[Translation]

**Hon. Marcel Prud'homme:** Honourable senators, Senator Fraser said she did not really want to participate in the debate at this stage, but that she decided, for certain reasons, to do so. I feel the same way; I do not want to take part in it at this point. I listened to Senator Fraser. I found her arguments disturbing.

I wonder about the usefulness of the Senate. Senator Fraser, who is a very well-known woman in Quebec, was able to represent Quebec's English minority at the right time. I prefer the term "English" to the term "anglophone". We should have a debate to define these terms: francophone, anglophone, French-Canadian and English-Canadian.

Senator Fraser is a very eloquent personality among Quebec's English minority, as she has demonstrated on numerous occasions. I was a bit lost when I heard her comments about the Senate. When I came here, I thought this was a house of sober second thought. This is what is written in the Speaker's Chambers.

[English]

Order excludes haste and precipitation.



[Translation]

Honourable senators, we are both Montrealers. I was a member of Parliament for 30 years. I know the haste and often the panic with which my honourable friends from the other place can act. I will tell you what a member of Parliament, who eventually became prime minister, always said:

[English]

"Don't worry, Prime Minister, we will pass that on a Friday."

[Translation]

It is always distressing to see the members of the party in power, in a panic and under the sway of public opinion, propose bills that were not properly discussed. The Senate plays its role. Senators Joyal and De Bané know that, when Prime Minister Trudeau, thinking he had detected agreement among the provinces, even though Quebec was not a party, said that if he could get the support of the provinces and the members, he would not let the Senate prevent him from concluding an agreement. From there, I think the idea of the suspensive six month veto arose. Six months provides time for thought.

[English]

It is a nice cool-off period.

[Translation]

There is nothing worse than mob rule. This is written in the Speaker's chambers, as you know. It is better for reason to triumph over public opinion and over public demonstrations. That is what concerns me. As a senator, I took a stand just before my arrival in the Senate during the debate on the religious question in Newfoundland. I will never forgive myself for defending this principle. I was the first to take part in the debate. As I was alone, I listened. The official opposition pursued the debate. One of the roles of the Senate is to defend the minorities. In this country, the word minority refers only to the French-speaking or the English-speaking minority.

• (1820)

There are minorities of all sorts and there are the regions. I wonder why we have a Senate. Suddenly people will say: Forget the Senate!

I listened carefully to Senator Fraser's description of those days. She mentioned 1968, but we could go back to 1960. Few of us here were present for the debate on the War Measures Act, but I was one of those who took part. I was ready to vote against unless I was allowed to do one thing and I did it. So I voted in favour. It is in the speech I gave so I am not making anything up today. It was unbelievable what we were asked to do back then, in the heat of the moment. I swore I would not go through it again.

The more I listen, the more I am troubled. I wonder what the Senate is doing and what its role is. The reason the House of Commons is rushing bills through so quickly is that it is afraid of public opinion; this is something one fears when one is elected. This was probably what was in their minds, when the Fathers of Confederation, in their wisdom, created the Senate, the upper chamber.

I would never interfere in the First Nations because they were there before me. I wish them justice. We must protect minorities. We ignored one of our duties when we became involved in the issue of religion in Newfoundland and even in Quebec. I was opposed in both cases. I am a traditionalist. I do not see why one should become something one is not simply in order to accommodate people.

We have opinions, people to represent, and that is what the Senate is there for. I think that the role of the Senate is too easily and too quickly dismissed in such an important issue. I will not deny that I would have preferred that it not come to this. If ever Quebec asks ambiguous questions, the federal government has only to refuse to negotiate. What then? There is an impasse. There is talk of a majority of two thirds of the electoral list. This worries me even more. We are creating problems where none exist.

Honourable senators, Senator Fraser is a member of a minority in Quebec and a majority in Canada, while I am the opposite. I am a French-Canadian from Quebec, and within Canada I am a member of a minority. This has not given me an inferiority complex, nor has it her, from what I know about her. That is the beauty of Canada. Is her conception of the Senate that we are used when it suits, and avoided if it might bring about a bit of a delay?

There are other ways. They could propose amendments to us with the stipulation that there will be a total of six days debate in the Senate. What does the Senate do? It is used when it suits, and when things get complicated, it is not. Everyone has an opinion on the Senate. I would like to have Senator Fraser's comments because I know that they will be well thought out.

[English]

**Senator Fraser:** Flattery, Senator Prud'homme, will get you nowhere.

**Senator Prud'homme:** Well, it got me here, the same as you.

[Translation]

**Senator Fraser:** Senator Prud'homme asks for my conception of the role of the Senate. I have always had the greatest respect for the Senate. Long before I came here, I said that a chamber such as ours is essential to a federation, for regional representation, representation of minorities, but above all, to use the classic phrase as "the chamber of sober second thought".

Why am I convinced that it is so important? Because of my life-long career in journalism, I realize everyone needs an editor, someone to see that what we have written is understandable, grammatical and respects the code of ethics. Everyone needs that. No one can be sure that they have written a text, be it for a column or for a piece of legislation, that is without error.

There are very few cases in Parliament in which the Senate does not have a role to play: the choice of government and the spending power. There is quite a strong argument. This case, too, involves a fundamental political decision that should be within the power of the House of Commons. Who forms the government? It involves no legislation, it is a political choice. How should public funds be spent? It is a political choice.

Do we or do we not recognize the will of the people of one part of our country to leave us? This is an essentially political decision. We will have our say, but there is a certain legitimacy, morally speaking, in the fact that, in the end, it will be up to the House of Commons to decide.

**Senator Prud'homme:** The honourable senator has just convinced me of the total opposite with her arguments. I am sure of the importance of the Senate. I do not hide that from you. The beauty here in the Senate is that we still have senators who listen to others and make up their mind as they go along. For example, in the area of agriculture, I prefer to listen to two or three senators who know more about the matter than I do, before I make up my mind. I have confidence in these people.

Senator Fraser just convinced me that those who are called the wise people should not be consulted. The spending power and the power to defeat the government are part of the tradition, but on the issue of breaking up a country made up of regions. And the Senate should not even get involved in the issue of the breakup of a country based on regions.

They will suggest that we strike a committee and discuss the issue, but regardless of the decision made, it will not mean anything. This worries me. I do not know how I will vote. I thought this would probably be the Senate's finest hour, the most important debate of my life. As I said, I am prepared to defend my position before the members of the Parti Québécois and the Bloc Québécois. Canada is indivisible, provided we respect its specificities, provided we respect its regions, provided everyone feels at home. If one of the founding groups does not feel at home, the Canadian federation will not work.

• (1830)

This is why, in their wisdom, the parliamentarians of the time created the Senate. They had already anticipated the possibility of incredible debates that would need to be toned down. I am prepared to have this debate with members of Parliament any time. Honourable senators, perhaps, at the end of the debate, we

can come up with an amendment that would allow the Senate to play the role for which it was created.

[English]

**Hon. Nicholas W. Taylor:** Honourable senators, I have a short question for Senator Fraser who has done a very good job of explaining the position — a very difficult position from where I stand, although not an impossible one.

My question follows the theory developed by the Leader of the Government, and elaborated upon by Senator Fraser. It has to do with the question of deciding on a referendum to separate, whether it be in Alberta, Cape Breton or Quebec, which is essentially a decision for the cabinet and the House to make. Senator Fraser went on to say that it could also be done by way of resolution. That is quite correct. In her short time here, the honourable senator has turned into a parliamentary whiz.

Why was this provision put into the bill and brought to the Senate in the first place? Was it to rub our noses in the fact that we were not to have any power? Is there some reason for bringing a bill to the Senate on something over which the honourable senator has said we have no authority with which to deal?

**Senator Fraser:** Honourable senators, I expect that we will hear from representatives of the government in due course in this debate. I will not hazard any reasons for their motivation. We have heard from the Leader of the Government, and I expect we will hear from him again, as well as from other ministers as time goes on.

I do not think this bill rubs our noses in anything. This bill sets out ahead of time the process the present Government of Canada believes would be the appropriate process for any federal government to follow if it were confronted with a strong secessionist movement, and a referendum. I think that this government's judgment on what is the appropriate course is entirely defensible. This is not the only course they could have chosen. It is the one they did choose, however, after long and careful reflection. I think the course they have chosen is legitimate.

Why? Because there was a vacuum, and because we have, in Quebec, a provincial government, as I said in response to an earlier question, in which responsible ministers are saying that Quebec would not have to respect the opinion of the Supreme Court of Canada.

**Senator Taylor:** Honourable senators, perhaps I did not phrase my question properly. I am glad, however, that the honourable senator has elaborated on it because I am very much in favour of the clarity argument and clearing the decks ahead of time. I have no problem with that.

My problem is with why this particular bill was brought to the Senate. Why not just use a resolution in the House of Commons to put through a clarity position? In other words, why bring a bill to us telling us that we have no power? I do not see any point in that, unless the government is trying to set a precedent. If it is trying to set a precedent, what is that precedent?

**Senator Fraser:** Honourable senators, this bill is a formal, solemn statement by way of legislation, something which is even more solemn than a resolution by either chamber, or even by both chambers, of the course to follow if we were to find ourselves facing a resolution. It is a statement by way of legislation. Therefore, it comes to us. If the Government of Canada had chosen, it could have simply made this decision statement by way of resolution in the House of Commons. It would not have had to consult us at all. It is consulting us now.

On motion of Senator Kinsella, debate adjourned.

## BUSINESS OF THE SENATE

**Hon. Dan Hays (Deputy Leader of the Government):** Honourable senators, as we are now constituted, I am not aware of any senator wishing to speak on any item on our Order Paper. Therefore, we should move to the adjournment motion.

### ADJOURNMENT

Leave having been given to revert to Government Notices of Motion:

**Hon. Dan Hays (Deputy Leader of the Government),** with leave of the Senate and notwithstanding rule 58(1)(h), moved:

That when the Senate adjourns today, it do stand adjourned until Tuesday next, April 4, 2000, at 2 p.m.

The Senate adjourned until Tuesday, April 4, 2000, at 2 p.m.



**THE SENATE OF CANADA**  
**PROGRESS OF LEGISLATION**  
**(2nd Session, 36th Parliament)**  
**Thursday, March 30, 2000**

**GOVERNMENT BILLS**  
**(SENATE)**

No.	Title	1st	2nd	Committee	Report	Amend.	3rd	R.A.	Chap.
S-3	An Act to implement an agreement, conventions and protocols between Canada and Kyrgyzstan, Lebanon, Algeria, Bulgaria, Portugal, Uzbekistan, Jordan, Japan and Luxembourg for the avoidance of double taxation and the prevention of fiscal evasion with respect to taxes on income	99/11/02	99/11/24	Banking, Trade and Commerce	99/12/07	0	99/12/16		
S-10	An Act to amend the National Defence Act, the DNA Identification Act and the Criminal Code	99/11/04	99/11/18	Foreign Affairs	99/12/09	0			
S-17	An Act respecting marine liability, and to validate certain by-laws and regulations	00/03/02		Legal and Constitutional Affairs	99/12/16	2	00/02/09		
S-18	An Act to amend the National Defence Act (non-deployment of persons under the age of eighteen years to theatres of hostilities)	00/03/21							
S-19	An Act to amend the Canada Business Corporations Act and the Canada Cooperatives Act and to amend other Acts in consequence	00/03/21							

**GOVERNMENT BILLS**  
**(HOUSE OF COMMONS)**

No.	Title	1st	2nd	Committee	Report	Amend.	3rd	R.A.	Chap.
C-2	An Act respecting the election of members to the House of Commons, repealing other Acts relating to elections and making consequential amendments to other Acts	00/02/29	00/03/28	Legal and Constitutional Affairs					
C-4	An Act to implement the Agreement among the Government of Canada, Governments of Member States of the European Space Agency, the Government of Japan, the Government of the Russian Federation, and the Government of the United States of America concerning Cooperation on the Civil International Space Station and to make related amendments to other Acts	99/11/23	99/12/01	Foreign Affairs	99/12/09	0	99/12/14	99/12/16	35/99

C-6	An Act to support and promote electronic commerce by protecting personal information that is collected, used or disclosed in certain circumstances, by providing for the use of electronic means to communicate or record information or transactions and by amending the Canada Evidence Act, the Statutory Instruments Act and the Statute Revision Act	99/11/02	Subject matter 99/11/24	99/12/06	99/12/09		
		99/12/06	Social Affairs, Science and Technology	99/12/07	2		
C-7	An Act to amend the Criminal Records Act and to amend another Act in consequence	99/11/02	Legal and Constitutional Affairs	99/11/30	4	99/12/08	00/03/30 1/00
C-9	An Act to give effect to the Nisga'a Final Agreement	99/12/14	Aboriginal Peoples	00/03/29	0		
C-10	An Act to amend the Municipal Grants Act	00/03/28					
C-13	An Act to establish the Canadian Institutes of Health Research, to repeal the Medical Research Council Act and to make consequential amendments to other Acts	00/03/30					
C-20	An Act to give effect to the requirement for clarity as set out in the opinion of the Supreme Court of Canada in the Quebec Secession Reference	00/03/21					
C-21	An Act for granting to Her Majesty certain sums of money for the public service of Canada for the financial year ending March 31, 2000	99/12/14	-	-	-	99/12/16	99/12/16 36/99
C-29	An Act for granting to Her Majesty certain sums of money for the public service of Canada for the financial year ending March 31, 2000	00/03/23	-	-	-	00/03/29	00/03/30 3/00
C-30	An Act for granting to Her Majesty certain sums of money for the public service of Canada for the financial year ending March 31, 2001	00/03/23	-	-	-	00/03/29	00/03/30 4/00

## COMMONS PUBLIC BILLS

No.	Title	1st	2nd	Committee	Report	Amend.	3rd	R.A.	Chap.
C-202	An Act to amend the Criminal Code (flight)	00/02/08	00/02/22	Legal and Constitutional Affairs	00/03/02	0	00/03/21	00/03/30	2/00
C-247	An Act to amend the Criminal Code and the Corrections and Conditional Release Act (cumulative sentences)	99/11/02							

## SENATE PUBLIC BILLS

No.	Title	1st	2nd	Committee	Report	Amend.	3rd	R.A.	Chap.
S-2	An Act to facilitate the making of legitimate medical decisions regarding life-sustaining treatments and the controlling of pain (Sen. Carstairs)	99/10/13	00/02/23	Legal and Constitutional Affairs					
S-4	An Act to provide for judicial preauthorization of requests to be made to a foreign or international authority or organization for a search or seizure outside Canada (Sen. Nolin)	99/11/02							

S-3	An Act to amend the Parliament of Canada Act (Parliamentary Poet Laureate) (Sen. Grafstein)	99/11/02	00/02/22	Social Affairs, Science and Technology
S-6	An Act to amend the Criminal Code respecting criminal harassment and other related matters (Sen. Oliver)	99/11/02	99/11/03	Legal and Constitutional Affairs
S-7	An Act respecting the declaration of royal assent by the Governor General in the Queen's name to bills passed by the Houses of Parliament (Sen. Lynch-Staunton)	99/11/02	00/02/22	Privileges, Standing Rules and Orders
S-8	An Act to amend the Immigration Act (Sen. Ghitter)	99/11/02		
S-9	An Act to amend the Criminal Code (abuse of process) (Sen. Cools)	99/11/03		
S-11	An Act to amend the Criminal Code to prohibit coercion in medical procedures that offend a person's religion or belief that human life is inviolable (Sen. Perrault, P.C.) (Dropped from Order Paper pursuant to Rule 27(3) 00/02/08) (Restored to Order Paper 00/02/23)	99/11/04		
S-12	An Act to amend the Divorce Act (child of marriage) (Sen. Cools)	99/11/18		
S-13	An Act to assist in the prevention of wrongdoing in the Public Service by establishing a framework for education on ethical practices in the workplace, for dealing with allegations of wrongdoing and for protecting whistleblowers (Sen. Kinsella)	99/12/02	00/02/22	National Finance
S-15	An Act to amend the Statistics Act and the National Archives of Canada Act (census records) (Sen. Milne)	99/12/16		
S-16	An Act respecting Sir John A. Macdonald Day (Sen. Grimard)	00/02/22		

## PRIVATE BILLS

No.	Title	1st	2nd	Committee	Report	Amend.	3rd	R.A.	Chap.
S-14	An Act to amend the Act of incorporation of the Board of Elders of the Canadian District of the Moravian Church in America (Sen. Taylor)	99/12/02	99/12/07	-	-	-	99/12/08	00/03/30	





# CONTENTS

Thursday, March 30, 2000

	PAGE		PAGE
<b>The Honourable Ron Gitter, Q.C.</b>		Senator Boudreau	900
Tributes on Departure, Senator Lynch-Staunton	889	<b>Natural Resources</b>	
Senator Hays	889	Disposal of Cape Breton Development Corporation—	
Senator Atkins	890	Effect of New Technology to Create Hydrogen from Coal.	
Senator Fairbairn	890	Senator Taylor	900
Senator Angus	891	Senator Boudreau	900
Senator Cochrane	892	<b>Royal Assent</b>	
Senator Taylor	892	Notice	901
Senator Stratton	892		
Senator Tkachuk	893	<b>ORDERS OF THE DAY</b>	
Senator Forrestall	893	<b>Business of the Senate</b>	
Senator Roche	893	Senator Kinsella	901
Senator Wilson	894	Senator Hays	901
Senator St. Germain	894	<b>Nisga'a Final Agreement Bill (Bill C-9)</b>	
Senator Gitter	894	Third Reading—Debate Suspended, Senator Austin	902
		Senator St. Germain	905
<b>ROUTINE PROCEEDINGS</b>		Senator Beaudoin	906
<b>Canadian Institutes of Health Research Bill (Bill C-13)</b>		Senator Murray	907
First Reading	895	Senator Tkachuk	907
		Senator Sparrow	908
<b>QUESTION PERIOD</b>		Senator Kinsella	909
<b>Natural Resources</b>		Senator Lynch-Staunton	910
Disposal of Cape Breton Development Corporation—		Senator Murray	910
Proposal by Community Group to Take Over Ownership		Senator Hays	911
of Donkin Mine, Senator Buchanan	895	<b>Royal Assent</b>	912
Senator Boudreau	896		
Disposal of Cape Breton Development Corporation—		<b>Visitors in the Gallery</b>	
Possible Competition for New Operator with Coal Imported		The Hon. the Speaker	912
from United States, Senator Buchanan	896		
Senator Boudreau	896	<b>Bill to Give Effect to the Requirement for Clarity as Set Out</b>	
Disposal of Cape Breton Development Corporation.		<b>in the Opinion of the Supreme Court of Canada</b>	
Senator Murray	897	<b>in the Quebec Secession Reference (Bill C-20)</b>	
Senator Boudreau	897	Second Reading—Debate Continued, Senator Fraser	912
<b>Agriculture and Agri-Food</b>		Senator Lynch-Staunton	914
Farm Crisis in Prairie Provinces—Flooding Problem		Senator Kinsella	915
in Manitoba and Saskatchewan, Senator Stratton	898	Senator Murray	916
Senator Boudreau	898	Senator Beaudoin	917
<b>Foreign Affairs</b>		Senator Prud'homme	919
China's Human Rights Record—Request for Tabling of		Senator Taylor	921
Document Outlining Government Policy, Senator Di Nino	898	<b>Business of the Senate</b>	
Senator Boudreau	899	Senator Hays	922
<b>Human Rights</b>		Adjournment, Senator Hays	922
China's Record, Senator Di Nino	899	<b>Progress of Legislation</b>	i
Senator Boudreau	899		
China's Record—United States Department of State Report—			
Government Position, Senator Lynch-Staunton	900		









*If undelivered, return COVER ONLY to:*  
Public Works and Government Services Canada —  
Publishing  
45 Sacré-Coeur Boulevard,  
Hull, Québec, Canada K1A 0S9



CANADA

# Debates of the Senate

2nd SESSION

• 36th PARLIAMENT

• VOLUME 138

• NUMBER 42

OFFICIAL REPORT  
(HANSARD)

Tuesday, April 4, 2000

THE HONOURABLE GILDAS L. MOLGAT  
SPEAKER

This issue contains the latest listing of Senators, Officers of the Senate, the Ministry, and Senators serving on Standing, Special and Joint Committees.





## CONTENTS

(Daily index of proceedings appears at back of this issue.)

## OFFICIAL REPORT

### CORRECTION

**Hon. Jack Austin:** Honourable senators, I wish to request that a correction be made to page 908 of the *Debates of the Senate*. It involves a misplaced period. I am quoted as having stated, "I was in the cabinet of former prime minister Trudeau," and there is no period at the end of that sentence. The sentence then continues, "from 1980-1981" and then there is a period. The period should be placed after the word "Trudeau" so that the next sentence reads, "From 1980-81, I spent six months on the joint Senate and House constitutional committee...."

---

*Debates:* Chambers Building, Room 943, Tel. 996-0193

Published by the Senate

Available from Canada Communication Group — Publishing, Public Works and  
Government Services Canada, Ottawa K1A 0S9.

Also available on the Internet: <http://www.parl.gc.ca>

## THE SENATE

Tuesday, April 4, 2000

The Senate met at 2 p.m., the Speaker in the Chair.

Prayers.

### SENATORS' STATEMENTS

#### PRIME MINISTER OF JAPAN

##### CONDOLENCES AND WISHES OF EARLY RECOVERY FROM SUDDEN ILLNESS

#### Hon. Dan Hays (Deputy Leader of the Government):

Honourable senators, on Saturday night, His Excellency Keizo Obuchi, Prime Minister of Japan, fell ill and was admitted to hospital. As honourable senators are aware, Prime Minister Obuchi suffered a stroke and is in a coma. His illness is of such gravity that an acting prime minister in the person of Mikio Aoki assumed the office, and he and the government have resigned making way for a new prime minister to be elected by the governing Liberal Democratic Party today.

I know all honourable senators join me in offering sympathy to the Japanese people and their government. I have spoken to Ambassador Katsuhisa Uchida to convey these sentiments, which have been acknowledged by Acting Prime Minister Aoki. I extend our sympathy to His Excellency's family, especially his wife, Chizuko Obuchi, the members of the diet and of his party.

We wish His Excellency a return to health, as the Japanese people have been well served by his invaluable talents as a political leader. Prime Minister Obuchi's political career and his long-standing interest in foreign relations brought him into frequent contact with Canada. I met with the then foreign minister Obuchi as Minister Axworthy's envoy to Japan to encourage Japan's participation in the convention against anti-personnel mines. Minister Obuchi not only received me warmly, but also actively encouraged his government to sign the convention. He was in Ottawa in December 1997 to sign the convention. He also greeted Prime Minister Chrétien and the entire Team Canada mission to Japan with great warmth and ensured the success of the trade mission.

In the recent past, His Excellency has done a great deal to nurture the good relationship between our two countries and has many friends in Canada. We will miss him as Prime Minister. For one so young, he has had a notable and extraordinary political career. We wish him our best.

#### PLIGHT OF STREET CHILDREN

**Hon. Sharon Carstairs:** Honourable senators, on Friday evening at the National Library, it was my privilege to see a film entitled *Letters to a Street Child*. The filmmaker is Andrée Cazabon. She is also the street child depicted in the film.

At the age of 14, she took to the streets of Ottawa, Montreal and Toronto. Through the efforts of Operation Go Home and through the help and assistance of Rideauwood Addiction and Family Services, Andrée left the streets, received treatment for her addiction to drugs, returned to school and became a film producer. She is one of the lucky ones.

The letters were written to her by her father, a teacher in Orleans, which is just east of Ottawa. He wrote to her while she was on the streets. His agony and that of his whole family is depicted in this film. It is not an easy film to watch, but as lawmakers and service providers it is very important that we do so.

Today, honourable senators will receive in their offices a letter from the Honourable Ethel Blondin-Andrew explaining how to gain access to this film through the House of Commons broadcasting branch.

Honourable senators, in the question and answer session following the presentation, I asked Andrée why she had taken to the streets. She said it was because of a sexual assault that took place while she had been on a visit to a farm.

• (1410)

Physical and sexual assaults are reasons our young people turn to the streets, yet we have few treatment programs available for them. Every single agency in Canada engaged in this work has a waiting list. Most provinces do not have residential treatment facilities. There is one, for example, in all of Ontario and it is located in Thunder Bay.

Honourable senators, children as young as 10 take to our streets. Are they not worth saving? If they are worth saving, why are we not doing it?

#### SENEGAL

##### NEW GOVERNMENT

**The Hon. the Speaker:** Honourable senators, I am taking advantage of rule 55(2) to make a statement which I believe is important from a democratic standpoint.

Over the weekend, I represented the Government of Canada Canada at the swearing in of the new President of Senegal in Dakar. I rise today to speak about this event because, in my view, it was an amazing tribute to democracy.

For the first time in that country, a change of government was brought about on a totally peaceful basis. The new President, Abdoulaye Wade, whom I have known for some 25 years, was the leader of the opposition for all that time. In the early years, there was little hope of bringing about change. That was the view held by most Senegalese. This recent election brought about change. A new government was elected. The retiring president has accepted the result most gracefully. The incoming president

has asked the retiring president to represent him at a major African conference in Egypt this coming weekend. The whole thing has been done in a perfectly democratic fashion.

I had the good fortune of speaking to a few young Senegalese. They said to me, "We had given up hope on democracy. It was always the same. It did not matter what we did; there were always the same people in office." Quite obviously, I make no comment from a partisan standpoint, only on the general principle that democracy prevailed.

Honourable senators would have enjoyed the enthusiasm there. One hundred thousand Senegalese came into the stadium for the swearing-in ceremony. It was the most impressive ceremony I have ever seen, and it was without expensive pageantry. It was simply 100,000 people cheering, absolutely convinced that they had made a change.

### CANCER AWARENESS MONTH

**Hon. Mabel M. DeWare:** Honourable senators, on this first sitting day of April, I am pleased to see that many in the chamber are wearing daffodil pins in support of Cancer Awareness Month in Canada.

Cancer Awareness Month is organized by the Canadian Cancer Society each April. It includes a series of fundraising and educational events across the country. It is an opportunity for Canadians to reflect on how cancer has changed our lives, to renew our commitment to a healthy lifestyle, and to help fund research that can improve cancer prevention and treatment. One day we hope to find a cure.

The importance of Cancer Awareness Month cannot be overstated when you consider that one in three Canadians will develop some form of cancer in his or her lifetime. I could recite some pretty grim statistics about the tens of thousands of Canadians who will be diagnosed with cancer this year alone and the tens of thousands more who will die from it. Today, I want to focus on something more positive: the hope and faith that cancer can be beaten.

The Canadian Cancer Society has adopted the daffodil, a bright, cheerful flower that heralds the arrival of spring as its symbol of hope. Indeed, hope underlies all of the important work done by the Canadian Cancer Society. The society, which relies entirely on donations, is the largest single funder of cancer research in Canada today. It also offers public education programs to promote prevention and early detection of cancer. It provides patient services to meet the social, spiritual, emotional and informational needs of people with cancer and their families.

Cancer touches all of our lives. I know all honourable senators will join me in applauding the courage of people with cancer.

[The Hon. the Speaker]

their friends and their families, and in saluting the Canadian Cancer Society and its 350,000 volunteers.

### TAIWAN

#### NEW GOVERNMENT

**Hon. Consiglio Di Nino:** Honourable senators, upon hearing of the strides democracy is making around the world, I thought it would be appropriate to comment on what has happened recently in Taiwan.

Until 1988, there was no democracy in Taiwan. Ever since Chiang Kai-shek and his followers fled to Taiwan, the party he once led has controlled power with a very heavy hand. In 1988, democratic elections were first held in Taiwan. Several weeks ago, Chen Shi-bian was elected President of Taiwan, defeating the Kuomintang candidate for the first time since the foundation of that country.

We should rejoice. Democracy is moving forward in many parts of the world. We should join with those in Canada and around the world in a non-partisan way to say "Well done. We are happy that the democratic system is becoming more important and accepted and embraced throughout the world."

On my behalf and on behalf of all honourable senators, I wish Mr. Chen good luck and many good years of democratic government.

[Translation]

### ROUTINE PROCEEDINGS

#### INTERNAL ECONOMY, BUDGETS AND ADMINISTRATION

##### SEVENTH REPORT OF COMMITTEE PRESENTED

**Hon. Pierre Claude Nolin,** Deputy Chair of the Standing Committee on Internal Economy, Budgets and Administration has the honour to table the following report:

Tuesday, April 4, 2000

The Committee on Internal Economy, Budgets and Administration has the honour to present its

##### SEVENTH REPORT

Notwithstanding, the *Procedural Guidelines for the Financial Operations of Senate Committees*, your Committee recommends that the following committee funding be released for fiscal year 2000-2001 as interim funding:



**Aboriginal Peoples Committee**

Legislation	\$ 3,167
-------------	----------

**Agriculture and Forestry Committee**

Special Study	\$19,535
---------------	----------

**Banking Trade & Commerce Committee**

Legislation	\$55,080
Special Study	\$80,564

**Energy, the Environment & Natural Resources Committee**

Legislation	\$ 8,000
Special Study	\$87,307

**Fisheries Committee**

Special Study	\$54,283
---------------	----------

**Internal Economy, Budgets and Administration Committee**

	\$ 3,333
--	----------

**Legal & Constitutional Affairs Committee**

Legislation	\$ 9,717
-------------	----------

**National Finance Committee**

	\$ 5,667
--	----------

**Privileges, Standing Rules & Orders Committee**

	\$ 3,333
--	----------

**Social Affairs, Science & Technology Committee**

Legislation	\$ 4,500
Of Life and Death	\$ 2,630
Special Study	\$13,667

**Transport & Communication Committee**

Legislation	\$17,133
Special Study	\$60,050

**Library of Parliament Committee (Joint) (Senate Share)**

	\$ 833
--	--------

**Official Languages (Joint) (Senate Share)**

	\$ 715
--	--------

Respectfully submitted,

PIERRE CLAUDE NOLIN  
*Deputy Chair*

**The Hon. the Speaker:** Honourable senators, when shall this report be taken into consideration?

On motion of Senator Nolin, report placed on the Orders of the Day for consideration at the next sitting of the Senate.

**SCRUTINY OF REGULATIONS****SECOND REPORT OF JOINT COMMITTEE PRESENTED**

**Hon. Céline Hervieux-Payette:** Honourable senators, I have the honour to present the second report of the Standing Joint Committee on Scrutiny of Regulations, relating to section 36(2) of the Ontario Fishery Regulations, 1989, as enacted by SOR/89-93.

[English]

• (1420)

**QUESTION PERIOD****DELAYED ANSWERS TO ORAL QUESTIONS**

**Hon. Dan Hays (Deputy Leader of the Government):** Honourable senators, I have response to a question raised in the Senate on March 21, 2000, by Senator Stratton, regarding the farm crisis in the Prairie provinces, flooding problems in Manitoba and Saskatchewan; a response to a question raised in the Senate on March 21, 2000, by Senator Atkins, regarding residency requirements for job applicants; a response to a question raised in the Senate on March 22, 2000, by Senator Andreychuk, regarding China, influence of environmental policy in granting of funds to Three Gorges Dam Project; and a response to a question raised in the Senate on March 23, by Senator Forrestall, regarding Sea King helicopters, level of flight training for pilots.

**AGRICULTURE AND AGRI-FOOD****FARM CRISIS IN PRAIRIE PROVINCES—FLOODING PROBLEM IN MANITOBA AND SASKATCHEWAN—REQUEST FOR RESPONSE**

*(Response to question raised by Hon. Terry Stratton on March 21, 2000)*

The Government of Canada has made a number of changes to existing Safety Net programs to help farmers who were unable to seed due to wet weather conditions last spring.

In partnership with the Government of Saskatchewan, the Government announced a \$50 per acre benefit for those with unseeded acres. This offer was open to the Government of Manitoba as well.

The Government extended the seeding deadlines for crop insurance.

The Government changed the Agricultural Income Disaster Assistance (AIDA) program to allow farmers to get interim payments on their 1999 benefits earlier.

The Government adjusted the Net Income Stabilization Account (NISA) program rules to permit easier access to those funds.

The AIDA program is designed to provide benefits to farmers who suffer severe income drops regardless of the circumstance. This would include farmers who are unable to seed due to wet weather.

In addition, for Manitoba, projected eligible expenditures under the Disaster Financial Assistance Arrangements (DFAA) will amount to approximately \$16.4 million, which would result in a federal share of about \$12.75 million. This will cover eligible items such as private property, road repairs, culverts, and other infrastructure.

Projected DFAA expenditures in Saskatchewan are estimated at \$2.5 million, which would result in a federal share of about \$1 million.

Losses in the agricultural sector not eligible for cost-sharing under the DFAA are being dealt with through AIDA.

## ENVIRONMENT

### RESIDENCY REQUIREMENT FOR JOB APPLICANTS

*(Response to question raised by Hon. Norman K. Atkins on March 21, 2000)*

Environment Canada does not have a residency requirement. The *Public Service Employment Act*, the legislation that governs hiring for much of the Public Service of Canada, allows the Public Service Commission, in its role as hiring agent, to establish geographic, organizational and occupational criteria that prospective candidates must meet in order to be eligible for appointment.

While the Public Service Commission often requires that potential candidates be residents of Canada, this is not an absolute, inflexible rule. The Commission's practice has been to include Canadians who apply in competitions opened to the public, if they are outside the country on a temporary basis and have a permanent residence in the area of selection.

## EXPORT DEVELOPMENT CANADA

### CHINA—INFLUENCE OF ENVIRONMENTAL POLICY IN GRANTING OF FUNDS TO THREE GORGES DAM PROJECT

*(Response to question raised by Hon. A. Raynell Andreychuk on March 22, 2000)*

Canada's position is that the advantages (flood control, power generation and inland shipping) and disadvantages (environmental issues and human displacement) of undertaking the project have been weighed carefully by the Chinese.

After considerable studies, analysis and deliberations, the Chinese government concluded that the imperative of flood control and the benefits of power-generation and transportation outweigh any negative environmental impact of proceeding with the project. The need to mitigate annual floods caused by the Yangtze River is China's fundamental rationale for proceeding with the project. Severe flooding in the Yangtze River Basin has killed thousands and caused significant damage in nearby communities. The Chinese government has already demonstrated that it is managing resettlement in a manner which minimizes hardship for the local population.

[ Senator Hays ]

The project will also generate substantial electrical power and improve navigational access to China's interior. The project will meet about 9 percent of China's current but rapidly growing power needs. This is renewable energy and considerably cleaner than the coal-fired plants that account for three quarters of China's energy and contribute to global warming.

In addition, the involvement of Canadian companies could help mitigate any negative environmental effects of the project, as the high environmental standards and practices of Canadian suppliers would be made available to the Chinese Project Team.

## NATIONAL DEFENCE

### SEA KING HELICOPTERS—LEVEL OF FLIGHT TRAINING FOR PILOTS

*(Response to question raised by Hon. J. Michael Forrestall on March 23, 2000)*

The Minister of National Defence has stated on numerous occasions that the Canadian Forces need to replace the Sea King helicopters, and that the Maritime Helicopter Project is his number one equipment priority.

The safety of personnel is of the utmost importance and this is a principle the Canadian Forces won't compromise. The Canadian Forces take every step necessary to ensure that Sea Kings operate safely until such time as a new maritime helicopter enters service. The Air Force follows a very strict maintenance and inspection regime, and the Sea Kings are upgraded as necessary.

As for the level of flying training, Sea King crews continue to meet the strictest training requirements. The Air Force continuously strives to maintain a training program that is adapted to both the capabilities and likely tasks of the Sea Kings. The Sea King crews are provided with the appropriate level of flying hours to ensure that they maintain all the skills they need to perform a wide range of missions and respond to a broad range of situations. The recent rescue of 13 crew members from a Panamanian cargo ship underscores the validity and effectiveness of Sea King crew training.

## ORDERS OF THE DAY

### NISGA'A FINAL AGREEMENT BILL

#### THIRD READING—DEBATE CONTINUED

On the Order:

Resuming debate on the motion of the Honourable Senator Austin, P.C., seconded by the Honourable Senator Gill, for the third reading of Bill C-9, to give effect to the



Nisga'a Final Agreement. (*Debate suspended March 30, 2000*).

**The Hon. the Speaker:** I should like to remind honourable senators that this item was not concluded the last time we met; it was suspended. We are now at questions and comments. If there are any further questions or comments, we will hear them before we proceed to further debate on the third reading motion.

**Hon. Jack Austin:** Honourable senators, I was in the course of answering a question the last time we met and should like to reply to all the questions that were asked of me before the Honourable Senator St. Germain begins his debate.

**The Hon. the Speaker:** Is it agreed, honourable senators?

**Hon. Senators:** Agreed.

**The Hon. the Speaker:** We will then conclude with the answers to the questions that were asked of the Honourable Senator Austin.

**Senator Austin:** Honourable senators, Senator St. Germain asked a question with respect to accountability. On page 906 of the *Debates of the Senate* for March 30, he asked:

Is there any possibility the transfer funds can be withheld if financial accountability is not being satisfied within these particular nations? Does the province and the federal government have the right to withhold funding?

Honourable senators, with respect to financial accountability, the Nisga'a government must meet similar standards of financial administration as other governments and must publish its laws in a public registry. Where Canada or British Columbia provide funding for programs or services delivered by the Nisga'a government, audited financial statements must be provided and the Auditor General can review these statements. In the case of federal funding, the full authority of the Financial Administration Act would apply to any and all transfer payments.

In addition, the three parties to the Nisga'a Final Agreement have entered into a companion agreement, separate from the treaty, called the Fiscal Financing Agreement. It is not a treaty and therefore not protected by section 35 of the Constitution Act, 1982. The Fiscal Financing Agreement specifies that the funding provided by Canada and British Columbia to the Nisga'a Nation and sets out the responsibilities of the Nisga'a government in delivering agreed-upon programs and services.

The Fiscal Financing Agreement specifies, in paragraph 87, the circumstances that would constitute a default, including failure to meet responsibilities, as well as bankruptcy or insolvency. Paragraph 90 sets out the right of the funding party to deduct from payments the amounts that were to be provided for the provision of the affected programs or services.

The Fiscal Financing Agreement also provides for the establishment of a tripartite finance committee comprised of federal, provincial and Nisga'a representatives that will monitor

financial arrangements between the parties and assist in resolving any issues that emerge. This committee is designed to prevent potential defaults from occurring.

Lastly, it should be noted that the Fiscal Financing Agreement must be renegotiated every five years.

Honourable senators, I believe these provisions and the various checks and balances represent the highest standards for accountability that could be expected from government anywhere.

I will send over to Senator St. Germain two pages from the Nisga'a Fiscal Financing Agreement that contain the default and remedies from section 87 through to section 92.

Honourable senators, Senator Beaudoin has commented on the role of a treaty under section 35 of the Constitution as being constitutionally protected. Senator Beaudoin indicated that he would be completely satisfied with the constitutionality of this agreement if he was confident that it is a treaty under section 35 of the Constitution.

I should like to draw Senator Beaudoin's attention — and, indeed, the attention of the all honourable senators — to the provisions in Bill C-9 and in the Nisga'a Final Agreement itself that clarify this point. Clause 3 of Bill C-9 states:

The Nisga'a Final Agreement is a treaty and a land claims agreement within the meaning of sections 25 and 35 of the *Constitution Act, 1982*.

Under the heading of "General provisions" in Chapter 2 of the Nisga'a Final Agreement, paragraph 1 states:

This Agreement is a treaty and a land claims agreement within the meaning of sections 25 and 35 of the *Constitution Act, 1982*.

The Honourable Senator Sparrow asked me questions with respect to polling. In my third reading remarks on March 30, I advised that in 1998, the polls showed that a majority of British Columbians supported the Nisga'a Final Agreement. I also stated that:

As the fortunes of the Clark government sank to an all-time low in public esteem, the polls showed a modest decline in support for the agreement.

Senator Sparrow asked me to elaborate on the polls, and I will do so as follows.

*Vancouver Sun* political columnist Vaughn Palmer in a column dated December 2, 1998, refers to the findings of MarkTrend, a B.C.-based polling group not usually associated with the NDP, wherein 35 per cent of respondents did not know what they thought of the Nisga'a treaty, 12 per cent were unaware of it, 30 per cent were somewhat supportive, and 24 per cent were somewhat opposed.



An October 22, 1998 article by Dianne Rinehart reported that according to an Angus Reid poll, 51 per cent of British Columbians viewed the Nisga'a Final Agreement as a step in the right direction, with 33 per cent of those polled holding the opposite view and 16 per cent unsure of their views. The poll was described as having been conducted shortly after the Nisga'a Final Agreement was signed and prior to the initiation of court proceedings by the provincial Liberal Party and others.

*The Ottawa Citizen*, in a story by Rick Molfina on November 6, 1999, carried the following comments:

The attitudes of Canadians toward aboriginal self-government are hardening, but a majority across Canada and in British Columbia support the historic Nisga'a treaty, a federal government survey shows.

"Canadians are becoming less likely to feel that Aboriginal Peoples have a historic right to self-government, and becoming more likely to feel that Aboriginal Peoples have no more right to self-government than other ethnic groups in Canada," said the report titled Survey of Land Claims and Nisga'a Treaty.

The Angus Reid poll was submitted to the Department of Indian Affairs in March 1999. It surveyed about 1,200 people across Canada.

Of those polled nationally who are following the treaty, 48 per cent strongly supported it, compared with 25 per cent who strongly opposed it. The remainder placed their support or opposition somewhere within a scale ranking their view from one to seven, with one representing strong opposition and seven representing strong support.

Of people polled in British Columbia who are following the Nisga'a treaty, 41 per cent strongly supported the treaty, compared with 39 per cent who strongly opposed.

• (1430)

Honourable senators, I also wish to comment briefly on the issue of "repealability" which Senator Kinsella addressed. I am having more work done on that most interesting question. I hope to have an opportunity to rise again during the debate to answer that part of the honourable senator's question.

**The Hon. the Speaker:** Honourable senators, the Honourable Senator Austin said he would like to reply at a later time to the request of the Honourable Senator Kinsella. As Senator Austin does not have the right of reply at third reading, is it agreed that he be allowed to do that?

**Hon. Senators:** Agreed.

**Hon. Gerry St. Germain:** Honourable senators, I have a question further to that of Senator Kinsella. In Senator Austin's reply, perhaps he could elaborate further on the non-delegation of this agreement where it is constitutionalized. He made reference to the fact that this was required for certainty, trust and various other reasons.

All other agreements entered into with our native peoples, in the cases of Sechelt, Sawtooth, Gwich'in, Yukon and various

[ Senator Austin ]

others, have been done on a delegated basis. Is he saying that those agreements are in jeopardy?

I personally would be very concerned if his government feels that these particular agreements are in jeopardy due to the manner in which they were formed. As far as I am concerned, those agreements were entered into in good faith and are not in jeopardy. Whether an agreement is delegated or not should make any difference to the honourable way it is carried out. The honourable senator may wish to answer this query later and tie it to the response to Senator Kinsella.

**Senator Austin:** Honourable senators, I have no difficulty in answering the question now. In terms of legal effect and the honour of the Crown, whether it is protected by section 35 of the Constitution Act, 1982 or whether it is the subject of legislation through the delegation of power, the obligation is the same. I see no difference. I have no trouble with the validity of the existing agreements. Nothing in Bill C-9 affects those existing agreements.

I should have noted, while on my feet, that Senator Sparrow asked for a list of the witnesses who asked to appear but were declined and for additional information with respect to witnesses. That information has been supplied to Senator Sparrow and to all honourable senators who participated in the committee's work.

**Hon. Lowell Murray:** Honourable senators, I think we have a problem here of consistency on the part of the government. The government recently refused what I considered to be a quite moderate proposal by Grand Chief Phil Fontaine for an amendment to Bill C-20. That proposal would have assured the aboriginal peoples of Quebec a seat at the negotiating table in the event of any secession negotiations. The government refused that proposal on the basis that the aboriginal peoples of Quebec are not a party to the amending formula.

Yet we have in this bill, it appears, a proposal to entrench under section 35 a self-government agreement and a treaty with the Nisga'a in British Columbia that simply sets aside the division of powers in the Constitution Act, 1867.

The honourable senator himself made the following statement about section 35, as found at page 910 of the *Debates of the Senate* of Thursday, March 30, 2000:

I have no hang-up with respect to the division of power between sections 91 and 92. We took that decision in 1982. Some want to repeal section 35. They want to argue for propositions that start without acknowledging its existence.

I neither put myself nor other senators in that category. I was sometime member of the joint Senate-Commons committee that studied the patriation resolution between 1980 and 1982, as was Senator Joyal and as was my honourable friend. At least three of us who are here today were here that night in 1981 when section 35 was approved. I remember well the very moving speech that Senator Austin made on that occasion, recalling his very first political assignment in Ottawa as a political assistant to the Honourable Arthur Laing, minister of Indian Affairs in the Pearson government. I am sure he recalls it as well.

I ask the honourable senator to reflect, first of all, on the circumstances under which the word "existing" was placed into section 35. I say that the word "existing" was put there to calm certain people. By the time we got to section 35, the patriation initiative had ceased to be an Ottawa-New Brunswick-Ontario initiative. Mr. Trudeau, by that time, had nine provinces on board, as we know, and section 35 was the subject of some very intense and careful negotiation, as my friend will recall.

I ask the honourable senator to reflect especially on the fact that, having agreed on section 35, we went on to provide for a series of constitutional conferences, first ministers' conferences, to discuss — and I quote from the section — matters that directly affect the aboriginal peoples of Canada:

...including the identification and definition of the rights of those peoples to be included in the Constitution of Canada...

That suggests to me that we will be taking considerable liberties with section 35 by purporting to entrench in it a self-government agreement or treaty that sets aside the division of powers in the 1867 Constitution.

**Senator Austin:** Honourable senators, I think that Senator Murray's excellent comments more properly belong in debate than as a question.

**Senator Lynch-Staunton:** Comment.

**Senator Austin:** I will be happy when I close the debate to cover the same ground and to provide my comments.

**Hon. Gerald J. Comeau:** Honourable senators, I asked some questions during committee stage regarding the fisheries allocations. Approximately 17 per cent of the Nass River total allowable catch is to be reserved for Nisga'a citizens. The official of the Department of Justice responded that this was not an exclusive fishery and, as such, the government had the right to allocate such entitlements to whomever it wished.

However, at that time I suggested that if such entitlements are to be made that there should be competent legislation providing that right to government.

• (1440)

Once this entitlement belongs to the Nisga'a, it becomes a permanent allocation to the Nisga'a. As such, Parliament can never touch it again because it is under section 35 protection. We are suggesting that Parliament does not have the right to abdicate such responsibility over allocations of fish.

Given that I was not provided with an answer to this particular question, would Senator Austin have a more direct answer at this point?

**Senator Austin:** Honourable senators, I have in front of me a letter, dated February 25, sent to Senator Comeau by Tom Molloy, the federal chief negotiator. I will read to the Senate the

answer of the chief negotiator. I will not read every word, just the general sense of the letter, if I may.

...you asked for my views on the question as to whether the Nisga'a treaty creates an "exclusive" fishery contrary to the Magna Carta. As you may know, this is one of the issues raised by the British Columbia Fisheries Survival Coalition ... in a constitutional challenge to the Nisga'a treaty in the British Columbia Supreme Court. The Survival Coalition claims that a constitutional amendment would be required to give effect to the Nisga'a treaty (a claim similar to the constitutional challenge filed by Gordon Campbell and members of the BC Liberal party.) The Survival Coalition also claims in court that the Crown holds the fishery in trust for the benefit of the people of Canada and has an obligation to manage the fishery for the benefit of the people of Canada.

The Magna Carta of 1215 establishes a common law public right of access to the fishery. The Magna Carta was intended to limit the King's capacity as owner of the seabed to grant exclusive fishing rights. The Supreme Court of Canada and the Judicial Committee of the Privy Council decided in the early part of this century that the Magna Carta applies to the fishery in tidal waters of coastal British Columbia. In *R. v. Gladstone* (1996) 137 DLR ... the Supreme Court of Canada recognized that aboriginal rights to fish can co-exist with the public fishing right in the following terms:

It should be noted that the aboriginal rights recognized and affirmed by s.35(1) [of the *Constitution Act, 1982*] exist within a legal context in which, since the time of the Magna Carta, there has been a common law right to fish in tidal waters that can only be abrogated by the enactment of competent legislation. While the elevation of common law aboriginal rights to constitutional status obviously has an impact on the public's common law rights to fish in tidal waters, it was surely not intended that, by the enactment of s.35(1), those common law rights would be extinguished in cases where an aboriginal right to harvest fish commercially existed. As a common law, not constitutional, right, the right of public access to the fishery must clearly be second in priority to aboriginal rights; however, the recognition of aboriginal rights should not be interpreted as extinguishing the right of public access to the fishery.

The Magna Carta was intended to limit the King's power to create exclusive fishing locations at which no other member of the public could fish. The *Gladstone* case illustrates that aboriginal rights to fish do not give aboriginal people exclusive fishing locations at which no other member of the public can fish. Aboriginal rights do not create exclusive property rights to fisheries in particular locations contrary to the Magna Carta. The analysis in *Gladstone* applies to the Nisga'a treaty rights to fish. Just as any Nisga'a aboriginal right to fish today on the Nass river is not an exclusive property right that would extinguish any public access to the fishery, future Nisga'a treaty rights will not be exclusive property rights that would extinguish any public access to the fishery.



Both aboriginal and treaty rights to fish are available only to the "aboriginal peoples of Canada" as defined in the *Constitution Act, 1982*. Non-aboriginal Canadians do not have a legal right to insist that they become members of any particular aboriginal community in order to obtain the benefit of being able to exercise aboriginal or treaty rights to fish. Applying the *Gladstone* case this does not mean that public access to the fishery is denied contrary to the *Magna Carta*.

This is why, during the presentation to Senators, we emphasized the fact the creation of Nisga'a treaty rights to fish, even though they are treaty rights only for Nisga'a persons, do not prevent members of the public from fishing. As indicated during the Minister's presentation to Senate by Canada's legal counsel, putting in place the Nisga'a treaty will not prevent other groups from exercising any aboriginal rights to fish they might have, and will not prevent recreational and commercial fisherman from fishing under ordinary law. In this sense the exclusive allocation or percentage share of the fishery for the Nisga'a is not an "exclusive" fishery in the legal sense contemplated by cases dealing with the *Magna Carta*.

The Nisga'a Treaty is drafted so as to prevent the Nisga'a from having any exclusive rights to sell Nass river salmon. The Fisheries chapter prevents the Nisga'a from selling a particular salmon species when commercial and recreational fishermen are not allowed to target those same species. Paragraph 33 of the Fisheries chapter provides:

If, in any year, there are no directed harvests in Canadian commercial or recreational fisheries of a species of Nass salmon, sale of that species of Nass salmon harvested in directed harvests of that species in that year's Nisga'a fishery will not be permitted.

The fact that no exclusive property right to the fishery is created is underscored by paragraph 3 of the fisheries chapter of the Nisga'a treaty which provides that:

This Agreement is not intended to alter federal and provincial laws of general application in respect of property in fish or aquatic plants.

Lastly, as our legal counsel discussed during the Minister's presentation before the Senate, the Nisga'a have no capacity to close any part of the Nass river fishery or to prevent fishing by any other group. Apart from conservation concerns which serve the interests of all fisheries participants, nothing in the Treaty would require the Department of Fisheries and Oceans to close Nass River fisheries or deny to any members of the public who wish to fish a right of navigation on the Nass River. In fact, paragraph 14 of the Access chapter of the Nisga'a treaty specifically preserves all public rights of access on navigable waters within Nisga'a lands.

Yours truly,

W. Thomas Molloy, Q.C.

[ Senator Austin ]

**Senator Comeau:** There are many words and interpretations by Mr. Molloy, who is a negotiator, I understand, of this agreement. Obviously, he wrote a lot of words to try to confuse everyone. That still does not answer my question.

As parliamentarians and as a government, we do not own the resource; it belongs to the Canadian public. As such, it is not ours to give to whomever we wish. We would be relinquishing our parliamentary duty in this stewardship that we hold over this resource to the Governor in Council, and the Governor in Council would then assume that responsibility from us. As I understand it, Parliament does not have the right to abdicate its responsibility, especially in a case where we do not even own the resource.

**Senator Austin:** I can only reply by saying that I do not believe the letter was written to confuse anyone, and I do not feel confused by reading it. I believe I can understand its argument.

In any event, the *R. v. Gladstone* decision says, as I have already mentioned, that a common law right to fish in tidal waters can only be abrogated by the enactment of competent legislation.

**Senator Comeau:** If such arrangements can be made, so that Parliament can relinquish its responsibility over fisheries resources and hand over that responsibility to cabinet, and if cabinet can then turn around and hand over these resources to whomever it wishes — whether an aboriginal group, friends of the minister, or friends of the Prime Minister — does that not create a precedent whereby such resources as scallops on the East Coast of Canada could be allocated to certain groups in perpetuity?

• (1450)

Is this what may be in store for Atlantic Coast lobsters? Will Minister Nault be given the power to allocate lobster stocks to groups of his choosing? We may be establishing a precedent that should be given careful consideration.

**Senator Austin:** I understand the concerns of Senator Comeau, although I do not believe they justifiably arise from this bill. The paragraph that I just read gives Parliament the power which it may choose to exercise, but in the Nisga'a case this has not been done, as the rest of the letter makes clear. It is not an exclusive fishery. Therefore, the principles from which Senator Comeau originally argued do not apply.

I understand the concern with respect to the allocation of fish and other seafood resources anywhere; however, that is, in my view, a political question rather than a legal one.

**Senator Comeau:** Obviously, I must provide the honourable senator's response to both East Coast fishing interests and West Coast fishing interests, in order to advise them that this may be what is in store for East Coast lobsters, the resource that is being requested at this time by certain groups. The senator says that is a political question. It appears that the government has decided the direction of the political question. There may be opinion contrary to what the government is suggesting.



**Senator Austin:** Honourable senators, this legislation applies only to the Nisga'a. I do not at this time wish to discuss its extension. I do not speak for the government; I am the sponsor of the bill. However, in my remarks closing debate at third reading I shall mention the *Marshall* decision.

**Senator Comeau:** Honourable senators, the Nisga'a treaty also provides for non-salmon fisheries resources in the Nass River Valley. It gives the government the right to negotiate entitlements to those resources. In effect, Parliament is giving cabinet carte blanche to assign allocations of the non-salmon resources.

Is this, as well, a precedent that will be established for fisheries resources all across Canada?

**Senator Austin:** Honourable senators, I think the rest of the topic can be canvassed when I conclude the debate.

**Hon. A. Raynell Andreychuk:** Honourable senators, I hope that Senator Austin will bear with me while I ask a series of questions on minority rights.

I will start with the Canadian Charter of Rights and Freedoms. In our hearings, we were told that the Canadian Charter would apply. However, the preamble of Bill C-9 says:

Whereas the Nisga'a Final Agreement states that the *Canadian Charter of Rights and Freedoms* applies to Nisga'a Government in respect of all matters within its authority, bearing in mind the free and democratic nature of Nisga'a Government as set out in the Agreement;

It would appear that the Canadian Charter of Rights, under section 25, already takes into account the distinctive philosophies, traditions, and cultural practices of the aboriginal peoples. Further, if we believe that this is a third level of government, section 33 would be employed and the aboriginal peoples could use it as a notwithstanding clause. Therefore, why was it necessary to include the words following "the *Canadian Charter of Rights and Freedoms* applies"?

**Senator Austin:** I shall need to consider that question, honourable senators. I asked for notice of questions when we concluded on Thursday last, and I have received none. The question asked by the honourable senator is a particularly interesting one, and one that I have not explored in detail. I look forward to doing so.

**Senator Andreychuk:** I did not think this question would catch Senator Austin off guard, because I asked it repeatedly in committee. I shall await a reply to that question, and ask further questions in writing.

The majority of the committee made an observation with which some of us did not agree. The last sentence reads:

Your Committee therefore strongly urges the federal government and its negotiating partners to pursue vigorously all means at their disposal to ensure that overlap issues are resolved to the satisfaction of concerned First Nations prior to the conclusion of future land claim agreements.

If the Gitanyow and Gitksan are acknowledged as First Nations, and if they are acknowledged to be in negotiations with the federal government, why should their rights be less than those of other First Nations, as would be the case if no further agreements are negotiated unless overlaps are resolved?

**Senator Austin:** We are not saying that at all. In the observation, we recognize the equity that is contained in the Nisga'a Final Agreement, which provides for adjustments, either to further negotiations or to the consequences of litigation. We also express our concern for future negotiations. We are asking the federal government and its negotiating partners to be vigorous, but we are not in any way asking them not to proceed with further agreements where they believe that the parties have negotiated in good faith and have met the other tests that Minister Nault set out in his evidence.

**Senator Andreychuk:** Is the honourable senator saying that all efforts were made to settle the overlap issues before proceeding with negotiations and that, therefore, the minority Gitksan and Gitanyow were not being prejudiced? If that is the case, what is the point of the last sentence?

**Senator Austin:** Honourable senators, we are saying that the agreement with the Nisga'a was concluded as a result of good faith negotiations and that the aboriginal rights of the Gitksan and Gitanyow are not absolutely or ultimately compromised. If they established their rights either through negotiation or litigation, those rights will be taken into account in the Nisga'a agreement. I am sure that the honourable senator is very much aware of paragraphs 33 to 35 in the Nisga'a Final Agreement.

**Senator Andreychuk:** I am pleased that Senator Austin mentioned those paragraphs. Does he not believe that precisely those paragraphs point out that the government is not acting in an appropriate fiduciary way toward all aboriginals, that it has taken the side of the Nisga'a against the Gitanyow and Gitksan? It is good public policy to be seen to be supporting one aboriginal claim over another, if we accept the fundamental point that all aboriginals are First Nations and should be treated equally by our government.

**Senator Austin:** This question was fully dealt with by Minister Nault in his evidence.

• (1500)

The Government of Canada at a certain point in negotiations must make a decision to proceed with the rights of the people with whom they are negotiating. In order to avoid prejudicing other rights, the provisions of the Nisga'a Final Agreement preserve those rights if they are accepted through the negotiating process or through the courts. Therefore, I believe that there is no basis to argue that the Government of Canada is in any way choosing sides or in any way acting prejudicially.

Senator Andreychuk is arguing for a total stasis in treaty negotiations and the progress in the course of establishing agreements with aboriginal communities. She is arguing that the slowest ship in the convoy should determine the entire speed of the fleet. She is arguing that the Gitanyow and Gitksan, in this particular case, should have the right to hold up the concluded negotiations between the Nisga'a, the Government of British Columbia and the Government of Canada until they, in their own discretion and their own time, decide they are willing to come to the table.

We have had evidence from Mr. Molloy and others that the Nisga'a made every effort to come to a conclusion. The government was satisfied that the Nisga'a had negotiated in good faith, and it decided to proceed with the Nisga'a agreement.

I believe that this first step is important to unlocking the process of treaty negotiations in the province of British Columbia. I believe that it does honour to all parties who have engaged in this negotiation and concluded it.

**Senator Andreychuk:** It is unfair to characterize my opinion as one where the government could not proceed. My question is not whether the federal government proceeded with the Nisga'a because, quite correctly, the federal government did proceed with the Nisga'a.

If one reads the report of the Royal Commission on Aboriginal Peoples, and I believe that is one of the bases upon which the government proceeded, it states that all aboriginal nations can proceed at their own speed. If the Nisga'a were ready to proceed and were acting in good faith, then the federal government had a responsibility to enter into that arrangement and discussion.

The question is: Why, in a public policy manner, would the government have included sections 33, 34 and 35 without some signal, undertaking, letter, public statement or otherwise to the Gitksan and Gitanyow that they would be treated the same way? Why did Minister Nault say that he believes the Nisga'a and not the Gitanyow and Gitksan?

The argument is not to hold up the debate; the argument is that the government took sides when it had other avenues, channels and legal recourses.

**Senator Austin:** May I ask the honourable senator to what alternatives she refers?

**Senator Andreychuk:** The government could have instituted a dispute-resolution mechanism prior to continuing with the Nisga'a. That is what Canada advocates around the world in our foreign policy.

I can see why the Nisga'a would ask for compensation if their claim failed in court. At that stage the Nisga'a would be required to allocate resources, time and energy to administering the process. At that point, the government should have signalled to the Gitanyow and Gitksan that those groups would be in the same position and would be offered the same compensation in a very public and open way.

**Senator Austin:** The entire process was public and open. I do not understand, and I probably never will, why Senator Andreychuk does not understand sections 33 to 35 because in my opinion, and in the opinion of the witnesses who appeared before the committee, they preserve the status quo for the Gitanyow and Gitksan without prejudice to them. Beyond that, we begin to dance on points of pins. Senator Andreychuk is entitled to her opinion, but I do not believe it is based on the facts.

**Senator Andreychuk:** I believe sections 33 to 35 are not dancing on the heads of pins. There is a clear difference between

[ Senator Austin ]

justice and the appearance of justice. If we are to have a just and fair system, it is not only that justice is done but that it appear to be done in the eyes of the people.

Pulling off a Gitksan-Gitanyow negotiator and moving him to the Nisga'a and putting in sections 33, 34 and 35 may not be prejudice, but it is the appearance of prejudice that is damning. In fact, the Gitanyow and Gitksan felt they had been prejudiced. I, for one, will not tell the aboriginal people that they were wrong and that their point of view with respect to how they can negotiate was inappropriate. My plea was for a better public policy that would not have put the Gitanyow in that position.

I do not believe I misunderstand sections 33 and 35. I question the federal government practice that I hope will not be repeated. I believe the Gitanyow and Gitksan have been prejudiced.

**Senator Austin:** Honourable senators, I look forward to Senator Andreychuk's contribution to the debate.

**Senator Lynch-Staunton:** She just made one.

**Senator Andreychuk:** In February, the Standing Senate Committee on Aboriginal Peoples table a unanimous report entitled "Forging New Relationships: Aboriginal Governance in Canada." Recommendations 1 to 4 deal very much with what we believe the federal government should do and how it should approach section 35 and aboriginal peoples. We were very strong in saying that aboriginals define themselves. The aboriginals determine how they gain their inherent rights and self-government. Recommendation 1 states:

The Committee recommends that flowing from Section 35 of the *Constitution Act, 1982*, federal approaches to engaging Aboriginal peoples in self-government negotiations be flexible, inclusive and demonstrate sensitivity to the diverse historical and contemporary circumstances of Aboriginal peoples and their aspirations for self-government.

Does the Honourable Senator Austin believe that passing the Nisga'a agreement and forging ahead with the Nisga'a at this point is inclusive and involves the Gitksan and Gitanyow?

Are we not violating our own recommendations? We say in recommendations 2, 3 and 4 that the Department of Indian Affairs and Northern Development is the wrong place to negotiate. The Nisga'a did what was right, but surely the federal government's approach does not comply with recommendation 1 to 4 of our report.

**Senator Austin:** Honourable senators, I see no inconsistency

**Hon. John Lynch-Staunton (Leader of the Opposition):** Honourable senators, if I may return to the observations in the fourth report of the committee to which Senator Andreychuk touched upon but to which I do not believe Senator Austin responded directly. I will read the last sentence because I believe it contradicts what we are being asked to do. The last sentence is quite firm. It states:



Your Committee therefore strongly urges the federal government and its negotiating partners to pursue vigorously all means at their disposal to ensure that overlap issues are resolved to the satisfaction of concerned First Nations prior to the conclusion of future land claim agreements.

The observation could not be clearer. Over 50 First Nations may be involved, in time, in a treaty process similar to this one. This one will obviously set the standard for future agreements. If it is good for 50-plus First Nations to be assured that the overlap issues, as they exist, be resolved before a conclusion of future land claim agreements, why is that principle not applicable in this case?

• (1510)

**Senator Austin:** Honourable senators, it was applied in this case. After vigorous pursuit of the settlement of overlapping claims, it proved impossible for the Nisga'a, the Gitanyow and the Gitksan to settle those claims.

Since 1995, the Government of Canada has laid down its policy with respect to the way in which it will conclude an agreement with an aboriginal community. As Minister Nault said in his concluding remarks, the Government of Canada has followed that policy with respect to the Nisga'a. It became satisfied that the Nisga'a had negotiated in good faith, had proven right of possession and the boundaries which they had submitted and that the Province of British Columbia was prepared to sign on to the agreement. In the final instance, after a vigorous pursuit going back years — certainly back to 1977 in some cases and 1991 in the principle agreement on negotiation signed by the Northwest Tribal Council — the Government of Canada, Nisga'a and the Government of the Province of British Columbia decided that they would come to an agreement with Nisga'a while preserving the rights, under sections 33 to 35, of the Gitksan and the Gitanyow to establish their claims. I believe that system is eminently equitable. It meets not only the tests of the Standing Senate Committee on Aboriginal Peoples' report to the Senate but also the tests of the observation of the committee.

**Senator Lynch-Staunton:** If I heard the Honourable Senator Austin correctly, the government took sides. It agreed with the Nisga'a's rejection of the other two nations' claims and therefore went ahead with the agreement. That is what I understand, namely, that government and the Nisga'a agreed that the Nisga'a's rejection of any territorial claims would be valid and, therefore, they would carry on with the agreement.

**Senator Austin:** Honourable senators, let me be as clear as I possibly can be. The government, after a long period of negotiation with all the parties, accepted the claims of the Nisga'a with respect to the boundaries and the use of lands and proceeded to conclude an agreement with the Nisga'a. I want to be very clear, and I will repeat it again: The rights of the Gitanyow and the Gitksan are preserved, either as a result of concluding negotiations or litigation. The treaty and the agreement will be adjusted to the establishment, through

negotiation or through litigation, of Gitksan and Gitanyow rights. Nothing is shut off; nothing is closed out. Those rights and the status quo are preserved.

**Senator Lynch-Staunton:** How can the government reconcile this pathetic generosity after having clamped down on the two claiming nations? How can you say on the one hand that the government and the Nisga'a agree that claims are ill-founded and then, on the other, say to the claimants, "By the way, keep on talking with the Nisga'a. If that does not work, then go to court to spend God knows how many years and how much money." How can the government reconcile those two statements? One is an absolute contradiction of the other. As Senator Andreychuk suggested, why not include in this agreement compulsory arbitration or some form of mediation, even a dispute settlement mechanism, so that a third party can force a claim settlement?

I do not pretend to be very knowledgeable of the treaty itself, but I have listened to and read much of the testimony at committee stage. I am troubled by some of the spokesmen for the two claimants stating that, perhaps, more than words will take place to assert their rights. That may be an empty threat and it may be theatrics, but the fact that it is on the record should be enough to make us pause and think of the impact, should that happen.

**Senator Austin:** Honourable senators, I appreciate the observation of Senator Lynch-Staunton. I should like to point out, however, that under the Nisga'a Final Agreement, should claims be established through litigation, in particular, through negotiation with both the Gitksan and the Gitanyow, the Nisga'a will be entitled to compensation. They have very little to lose. If they are prepared, through negotiation with the Gitksan and the Gitanyow, to make adjustments to the current terms of the agreement, the Nisga'a will not lose anything of value. They will get compensation in other terms of value. They should not be accused of not being willing to proceed to negotiate in good faith with the Gitksan and the Gitanyow once this agreement is terminated. They have every reason to want to live in harmony with their neighbours. They also have every reason to go ahead with their own political, economic and social development, and not be held up by neighbours who are neither prepared to come to the table, which is the case with the Gitksan, nor prepared to move quickly, as is the case with the Gitanyow.

I wish to remind all honourable senators that we are in the twentieth year of negotiations and the tenth year since the rules with respect to boundaries were established in 1991. The Nisga'a have been a very patient people. They have been at this particular process of negotiation for a very long time. I want to say — and I will probably have to say it again and again — that the Gitksan and the Gitanyow are not compromised in law. I believe that the Nisga'a will continue to hold discussions with those tribal communities, the Gitksan and the Gitanyow, in the hope that there will be a settlement. This is not an unusual situation, as was pointed out to us by Senator Christensen. In the Yukon, it took two to three years after the Yukon final agreements were signed, for some participants to settle boundary claims with other Yukon aboriginal communities.



**Senator Lynch-Staunton:** I will not prolong this discussion because I will have a chance to enter the debate later. However, I congratulate the Nisga'a. They are winners on both counts. If their position is maintained, then it is maintained and the claims are rejected. If they lose, then they are compensated. What a position to be in. The point is that if it happened in the Yukon and it is happening here, why at the same time be so adamant in saying, "Do not let it happen again?" That is the point of the question. Obviously, it is an admission that not having a solution to the overlap problem is wrong. Do not try to convince us that, because negotiations have been going on for 20 years, we should give up. In the conclusion of the report, the committee indicates that any future agreement should ensure that any overlapping problems will be resolved first.

Honourable senators, I repeat my first question: Why not impose that principle on this agreement and set a principle which must be followed in future agreements? I am going beyond my knowledge of these negotiations, but I can see future negotiation with overlap problems and someone waving the Nisga'a agreement and saying, "You allowed these overlap claims not to be resolved before signature. In so doing, you set a precedent. Let us do it again." This committee observation will then be meaningless. In fact, you have proven by what you said that it is meaningless.

**Senator Austin:** The honourable senator is off base. Upon reading the entire observation, he will see that the establishment of the entitlement to include the Nisga'a agreement is referred to in the first part of the observation, and all else flows from that. His interpretation is not correct.

In any event, I look forward to the debate. We have started, and I do not wish to deprive any of my colleagues in this chamber of the novelty of putting forth their arguments and defending those arguments later on. Much of what I expected to hear from honourable senators is coming out in this question period. I think you are being unfair to yourselves.

**Senator Lynch-Staunton:** I am simply quoting to the honourable senator the words of his committee, which recognizes that the parties have attempted to address this question by including provisions in the Nisga'a Final Agreement that aim to preserve and protect the rights of aboriginal peoples other than the members of Nisga'a Nation. Your committee is, nevertheless, "deeply concerned about the implications of outstanding overlap issues not only in relation to the Nisga'a and neighbouring First Nations but in a broader context." In that statement, you have demonstrated deep unease at the fact that this issue is not resolved. My question is: Why did you not put in your report, "Because we are so uneasy about that situation, resolve it before signing the treaty?" If you had put that in front of the Nisga'a and the other two nations, I am sure the privileged ones in this treaty might be more anxious to have the claims resolved. As it is, they have no interest in so doing, and the other two nations are being penalized.

• (1520)

**Senator Andreychuk:** Honourable senators, I am sure that Senator Austin did not intend to say that our arguments, particularly mine, were novel and not sincere, because they are

sincere questions. I have absolutely no doubt about the sincerity and good faith of the negotiation by the Nisga'a. They have proved that in the testimony before us and in their actions otherwise, to my knowledge.

Is it your understanding — and is it on that basis that you are supporting this legislation — that the federal government must negotiate in good faith with aboriginal peoples?

**Senator Austin:** First, honourable senators, I would be astonished if I used the words "sincere" or "insincere" in what I had to say, but the record will show if I did. If I accused anyone on that side of being insincere, I certainly did not intend to do so, and I apologize. I did use the word "novel", and I do not believe that that is a derogatory reference in any way.

As to the outstanding portion of the honourable senator's question, I shall stand down from replying for the time being. I would like to hear the full arguments of all my colleagues opposite. Following that, I would be pleased to ask questions of those who enter the debate on that side, or on our side, because I think very soon it should be my turn to ask questions.

**Hon. Anne C. Cools:** Honourable senators, when Senator Austin was responding to Senator Comeau's question, he read into the record some extracts from a document. Would Senator Austin table that document, in order for all of us to have a copy of it?

**The Hon. the Speaker:** Honourable senators, leave must be granted for the tabling of documents. Is leave granted?

**Hon. Senators:** Agreed.

**The Hon. the Speaker:** Leave is granted.

**Hon. Noël A. Kinsella (Deputy Leader of the Opposition):** Honourable senators, I wish to thank Senator Austin for agreeing to reply to my question on whether the committee canvassed the "repealability" of this bill.

When we suspended last Thursday, at Senator Austin's request, some of us did give him a heads-up on the kinds of questions we were interested in exploring. I should like to explore, as I mentioned to him last Thursday, whether the committee examined the international treaty obligations that Canada has assumed. For example, we are bound by international treaty obligations pursuant to the United Nations International Covenant on Civil and Political Rights, as well as the obligation under the first option of protocol to that international covenant.

I mention that one in particular because of my experience in assisting native women in Canada in filing their communications against Canada a number of years ago because of the old section 12.1(b) of the Indian Act, which, as Honourable Senator Austin will recall, was found by the United Nations Human Rights Committee to be in breach of covenant obligations.

At that time, then prime minister Trudeau accepted the judgment of the United Nations, which was made after the Supreme Court of Canada had found the sex discrimination in the Indian Act to be okay and not offensive to the Bill of Rights.

Prime Minister Trudeau then caused work to be commenced for the preparation of what was ultimately Bill C-31. That bill was introduced into Parliament and was adopted. It struck down the rights-denying provision. Thus, the question of the international treaty obligation is very important and we need to understand it. As such, did your committee look at whether Parliament will be able to do anything about treaty offences or non-compliance with treaty obligations as a result of things that may occur on the Nisga'a land?

**Senator Austin:** Honourable senators, the committee did not hear evidence on the subject of the question that Senator Kinsella has just addressed. However, I shall be very pleased to discuss the question with officials of the Department of Indian Affairs and provide Senator Kinsella with the best answer I can give.

**Senator Kinsella:** I thank the honourable senator for that and, in fairness to him, I shall develop my own thinking. Your committee did not examine it. When I participate in the debate at third reading, I shall examine it. With reference to the "repealability", it would be helpful to have that answer before I participate at third reading.

One final question. The War Measures Act was replaced by the emergency measures legislation, and that legislation is recognized by international human rights treaties. In other words, there are times when the life of a nation is threatened or there are emergencies and, as such, the rights and powers of subsidiary governments must be derogated.

Did your committee look at the application of the emergency measures legislation and its application to the Nisga'a land? That legislation is under review by Parliament. There is a timeline within which Parliament must examine whether an emergency exists. Hence, there are controls that were not in place with the War Measures Act.

Does the derogation of rights and powers apply to the Nisga'a land by virtue of the emergency measures legislation?

**Senator Austin:** Here again, honourable senators, the matter was not raised in the evidence before the committee, but I shall be pleased to examine that question with government officials and to try to provide Senator Kinsella with a response.

**Senator Comeau:** Honourable senators, I have a question with respect to "repealability", and I raise that question in light of some of the concerns regarding the role of the Senate as raised in the clarity bill, which is also before us.

My understanding of the Nisga'a treaty is that any amendment to that treaty must involve the three parties, the Nisga'a, the legislature of British Columbia and the federal cabinet. Why did it not follow the same trend as in British Columbia, where the legislature was to be involved in any amendments? Why was the Parliament of Canada excluded from the amendments of the Nisga'a treaty? Why was it left in the hands of cabinet, rather than Parliament?

**Senator Austin:** I am not sure that the honourable senator's question is correctly based. There are a number of ways to make changes to the agreement. Of course, Bill C-9 itself, to be changed, would require agreement of the three parties. If it were

a legislative change, it would require legislation. There are, however, provisions for change within the Nisga'a Final Agreement that do not require legislation. They require the agreement of the parties.

I will study the honourable senator's question in an attempt to provide him with a more full answer.

**Hon. Gérard-A. Beaudoin:** In reference to Senator Murray's question on the division of power, reference was made to the application of the Canadian Charter of Rights and Freedoms. Can it not be considered in the answer that section 31 of the Charter says that nothing in this Charter extends the legislative powers of anyone or authority?

• (1530)

Section 25 of the Charter says, on the other hand, that the guarantee in this Charter of certain rights and freedoms should not be construed so as to abrogate or derogate from any aboriginal treaty or other rights and freedoms.

Section 35, as we know, is not in the Charter — it is outside the Charter. Therefore, I wonder if it might be possible for Senator Austin, in his reply, to refer to the effect of section 25 and section 31.

**Senator Austin:** Thank you, Senator Beaudoin. I will endeavour to do so.

**Hon. Jeremiah S. Grafstein:** Honourable senators, I have a supplemental question arising out of Senator Kinsella's question. It is one of the issues that troubled me as I reviewed the evidence of the committee after the hearings. Perhaps I could put that same question in another way, because Senator Austin is already on notice that he will respond.

My question is this: In the event of a national emergency as declared under emergency legislation, such as a declaration of war, to what extent would the federal powers, including its powers under section 92 and also its residual powers, be subject to limitation as it applies to the paramount powers granted to the Nisga'a under this treaty?

**Senator Austin:** I will take that variation on the question under consideration and endeavour to respond to it.

**The Hon. the Speaker:** If there are no further questions or comments, we are prepared, then, to proceed to further debate at third reading.

I must give warning to the Senate, particularly to Honourable Senator Austin, who has referred several times to closing the debate. Under rule 35, there is no closing of debate at third reading. Of course the Senate is free by leave to do as it wishes, but under rule 35, there is no provision for closing debate at third reading.

**Senator St. Germain:** Saved by the bell.

Honourable senators, first, I should like to recognize the fact that today we have in the gallery the leaders and representatives of the Nisga'a nation. I think it is important that we recognize them, the hard work that they have put in to get to this stage of their negotiations, and the way they followed the proceedings



and worked to try to respond to all the questions that were put to them during the course of each of the studies that has taken place.

We have arrived at a critical time in the history of British Columbia and our dealings with our aboriginal peoples. Those of us from British Columbia, like Senators Austin, Perrault, and myself, know full well that we must make progress in this particular area. Expectations are extremely high in British Columbia that what we do here will be the right thing, the correct thing, and that it will bring finality to the issue.

I thank the members of the Standing Senate Committee on Aboriginal Peoples for their serious examination of this legislation. I also thank Senators Sparrow, Grafstein, Beaudoin, Joyal, Lawson, Wilson, Comeau and Nolin for their interest and attention to the issue of British Columbians.

Senator Austin, as Chair, had a difficult task. In retrospect, we should have travelled. We should have gone to listen to the man or woman on the street. It was decided that we would not do that, but I believe it was important. We are at third reading stage now, but I wanted to mention that in passing as a reflection of some of the evidence brought before the committee.

Honourable senators, negotiated treaty settlements are important to the economy of British Columbia. British Columbians want their aboriginal land claims and self-governance agreements concluded so that we can have certainty and finality in our province. I have consistently stated that I am pleased that the Nisga'a negotiated an agreement. These agreements must take place. As stated before, politically my party is in agreement with the intent of the deal.

However, in my review of this agreement, and in the studies that we have done, I am struck with the realization that only three groups really want this deal as written. I stand to be corrected on this. The majority of the Nisga'a, those who voted, accepted this deal through the ratification process. The federal and provincial governments want this deal. However, in spite of all polling, I believe that fewer than 50 per cent of British Columbians really understand the deal and want it. That is a major concern, and it must be a concern to all of us. They do not understand partly because this deal is so complex. As well, British Columbians are doubtful that this agreement will bring the finality and certainty that is intended.

I believe we have a responsibility not only to pass legislation but to ensure that people on the street understand what is being done. It is not a case of government doing things to people but doing things for people.

My understanding is that the Tsimshian and Tahltan nations, both neighbours of the Nisga'a, signed agreements with the Nisga'a, but their traditional lands and aboriginal rights were marginally infringed upon. They apparently are still negotiating with the Nisga'a in regard to their differences.

The 2,000 house members of the Gitanyow and the 10,000 house members of the Gitksan nations are opposed to this  
[ Senator St. Germain ]

specific agreement. Why? As has been mentioned, it is because their rights will be severely impacted. This has been mentioned during the questioning of Senator Austin.

Honourable senators, I have a great deal of concern about several aspects of this bill. There is the constitutional aspect, accountability, minority rights, women's rights, the fisheries, etcetera. I will not go into constitutional issues, mostly because I am not as qualified as others in this place to fully discuss constitutional issues, but I will make some comments about the delegated authority.

I have never received a full answer to the question of why this is a constitutional agreement as opposed to a delegated agreement. Are all the other issues, as I asked Senator Austin today, in jeopardy? What is wrong with them? If nothing else, why was this deal done differently? Will we have to change the others into the type of self-government authority legislation that the Nisga'a agreement creates? As I pointed out in my questioning on the Sahtu, Gwich'in, Sechelt and Yukon, some of those agreements were reached by the previous government and some have been concluded by the present government. I hope that those agreements are not in jeopardy. Senator Austin has said they are not. If they are not, why did we not continue the way we proceeded in the past?

Honourable senators, I have been working on the British Columbia treaty claim settlement for over five years. I have been particularly concerned with the way the federal government has handled the overlap issues. I have travelled to the Gitanyow, Nisga'a and Gitksan lands and have spent time with the people. It is not a question of me reading the newspaper or transcripts. I have been face to face with these people. I have listened to them and spoken with them.

Let us be clear in this place: The land deal the government have negotiated today is far greater than the actual original land claim by the Nisga'a. I gather I can use a book, even though we are not supposed to use props. To give an analogy, the original claim of the Nisga'a was about the size of my fist. There is some debate, but it has been explained to me that the *Calder* claim in the 1970s was done without prejudice, referring to the boundaries therein.

• (1540)

The 1913 resolution included the Kinskuch River, which is considered to be one of the boundaries. The 1913 resolution went further than the *Calder* boundaries. The final boundaries that were agreed upon delineated an area the size of both my fist and my hand. What is of great concern to me are the fee simple properties that were granted to the Nisga'a within the areas in dispute.

We are placing the Gitanyow and Gitksan in an untenable position, honourable senators. I have read the history, the court actions and the testimony, and I have listened to the people of the Nass Valley and British Columbia as a whole. I read of the petitions of the late 1800s and 1900s regarding lands and the rights of first peoples thereto.



We know that the *Calder* decision was instrumental in forcing the federal government to create the 1973 comprehensive claims settlement process, which did not adequately address self-governance. We know that the 1980-82 patriation of our Constitution recognized the rights of our peoples within it. We also know that self-governance was not defined or specifically included at that time, nor later. We know that during the 1980s and early 1990s the government dealt with the issue in the only manner available without amending the Constitution, even though the Charlottetown Accord exercise established a solution to recognize self-government for aboriginals within Canada.

We also know the advice and instruction from the Supreme Court that arose from *Sparrow* — the Musqueam — in 1990 and *Delgamuukw* — the Gitksan — in 1997. We know the 1999 B.C. Supreme Court decision in *Luuxhon*. I will speak further to the *Luuxhon* case in a few moments.

We also know of the establishment of the land claims and treaty negotiations process in 1993 and of the British Columbia Treaty Commission that was then established. We must recognize that it was effectively *Calder* that propelled the issue of modern day negotiations. That, then, is really the modern day starting point for our land claims and treaty rights. This is the background context for these negotiations and agreements.

If we look at this history further, honourable senators, we see that latter day Nisga'a negotiations started in 1976 because of the *Calder* decision. In fact, we know that the Gitanyow filed to commence their negotiations first in 1976, but the government would not put them first in the line. The filing of the Gitanyow was accepted in 1977. These two groups effectively commenced their respective processes at the same time. We also know that the Gitksan submitted their claim in 1979.

Canada signed framework agreements with the Nisga'a in 1989 and again in 1991. In the late 1980s, the Gitanyow and the Gitksan commenced the research that would determine where the boundaries of their traditional lands should be drawn. This work was concluded in 1995.

There was a shift in population in the late 1800s, driven by missionaries. However, the eight houses of the Gitanyow were never relinquished and their land was never abandoned. There was a migration due to the economies of scale at that time in this area, as well as due to missionary direction and, I presume, attempted assimilation. However, never did the Gitanyow relinquish rights to the eight houses that are configured in pieces of land.

The Gitanyow had to wait. They again filed their claim when the B.C. Treaty Commission commenced operations in 1993. It is important to point out that the Nisga'a and the Gitanyow were discussing and signing agreements and MOUs through the 1980s and right up to 1992. At the heart of these agreements was the agreement of the Nisga'a that their land boundary with the Gitanyow was at the mouth of the Kinskuch River, a very important boundary. With the exception of a couple of small true overlapping claims, these two groups agreed upon ownership of the land and upon where the boundaries lay. Therefore, the Gitanyow were not overly worried or too aggressive about the

land claims process. They were satisfied with the boundaries that had been established.

It was through the pre-AIP consultations of 1992 to 1995 that the Gitanyow accelerated their efforts, resulting in the signing of their framework agreement in 1996 with the B.C. Treaty Commission, the same year the Nisga'a signed their AIP.

The Gitanyow quickly learned that up to 85 per cent of their traditional lands were being claimed by the Nisga'a.

During 1996 to 1998, the Nisga'a held their post-AIP consultations, resulting in the signing of the Nisga'a Final Agreement in 1998. Frustrated with the governments' continuing lack of good faith and negotiations to settle land boundaries, the Gitksan sued the governments and won under *Delgamuukw*. With the governments' persistent ignorance of the Gitanyow's requests to negotiate in good faith the overlap issues with the Nisga'a, the Gitanyow were once again forced to appeal to the courts for instruction. That was the *Luuxhon* case.

Honourable senators, Bill C-9 infringes upon the rights of several aboriginal groups. It is the Gitanyow and the Gitksan who are fighting for their rights.

The federal government has told these groups that it will not renegotiate any terms of the Nisga'a Final Agreement and that overlap issues will be dealt with after the Nisga'a Final Agreement and through the processes set out within the Nisga'a Final Agreement.

The minister admitted in committee that the government chose to proceed with the Nisga'a and accepted their information on traditional lands over that of the other groups. The courts have urged aboriginal peoples to negotiate settlements to overlap issues among themselves.

The minister chose the Nisga'a over the Gitanyow and the Gitksan. It is as simple as that. He said that he did. The minister and the government have a fiduciary responsibility to all aboriginal peoples. I do not believe that the government can take sides. However, by its own admission, it has.

The Nisga'a have done an excellent job of negotiating on behalf of their people. They asked for a huge tract of land, and they have received it. The federal and provincial governments wanted anything that would achieve what some describe as "political objectives." That is what was said in committee.

After 27 years, the government can say that they have resolved the Nisga'a claims for aboriginal rights. However, if this process continues as it has, it will be done on the backs of all the other aboriginal groups in the area — mainly the Gitanyow and the Gitksan.

The Gitanyow and Gitksan have no financial resources with which to fight for their rights. I asked the minister in committee whether he was prepared to fund them. He did not answer the question. The government advanced funds for the Nisga'a negotiations by way of loans and legal counsel but the government has basically said that it will not pay for Gitanyow and Gitksan counsel.

The government has said, "We are right and everyone else is wrong; if you do not like the results, you can go to court." The government, through its own actions, provided a whole new definition for what appears to be a slight degree of arrogance.

Honourable senators, the Nisga'a worked hard for a deal and they should get a deal. They want a deal and they deserve one.

As honourable senators know, the purpose of this place is to examine and revise legislation, investigate national issues, and represent regional, provincial and minority interests. This has never changed. This is our responsibility as senators. Our instructions are to make laws for the peace, order and good government of Canada. We are not to be coerced in any way, shape or form to ratify what is not in the best interests of all Canadians.

Does this bill deserve to be passed into law? I believe that there may be flaws in Bill C-9 and in the Nisga'a Final Agreement which must be remedied. However, the flaws are not only in the agreement but also in the process.

Chief Joe Gosnell said that it is not a perfect agreement. No one is seeking perfection, honourable senators, but we must examine the process.

• (1550)

We all know that the federal government, at least, established a policy to deal with the land claims and treaty agreements. However, not one of us can state why this treaty and land claim deal was negotiated in the way it was outside of the B.C. Treaty Commission process. Perhaps that question has been answered.

I wanted to discuss amendments at the committee, but senators were told by the chairman that amendments would not be accepted and that they should be proposed in the Senate at third reading.

Instead, it was proposed that advice be put to the government pertaining to the future treaties where overlap treaty rights were in conflict and that they would be resolved through mediation and arbitration. The observation questioned by Senators Andreychuk and Lynch-Staunton and reported to this chamber at report stage is an admission — and I agree with Senator Lynch-Staunton, Senator Andreychuk and others who have questioned Senator Austin on this point — that of what I speak today is correct and should be dealt with before ratification and Royal Assent. That observation, inasmuch as others may want to tie it into this and that, is an admission that the B.C. Treaty Commission produced a document stating that no treaties would be signed or entered into at one stage and then later changed its position, clearly stating that all overlaps should be resolved prior to entering into any agreements or treaties.

Honourable senators, I will provide this chamber with a quote that was uttered by an honourable gentleman in relation to another agreement before the House of Commons. On May 25, 1993, Minister Robert Nault is reported in Hansard at page 19537 as stating:

[ Senator St. Germain ]

What members of this side of the house have tried to relate to their constituents and all Canadians is that we as a House of Commons, as parliamentarians who represent the people, should not be so quick to ram this agreement through the House.

Why Mr. Nault has lost his passion to protect the people now, when he had asked for this in 1993, is hard to understand.

It is important that Canada's First Nations have an unencumbered land base. The Nisga'a Final Agreement pits native against native. Supporters of this agreement tried to dismiss this as nothing. Surely, honourable senators will understand that a people whose livelihoods and existence depend upon the ability to harvest natural resources needs a land base. However, it is not just any land base. It must be a land base with which they are familiar, where they have lived for hundreds of years; a land base they can, without any dispute, call their own. That is why it is so very wrong for the Governments of Canada and British Columbia to have negotiated a settlement with the Nisga'a that includes lands claimed by the Gitanyow and Gitksan First Nations people.

The government's answer, when we raised the inequities of the situation with the minister in committee, was that the ultimate settlement of the disputed land ownership claims is provided for in the Nisga'a agreement in sections 33, 34 and 35, as referred to by Senator Austin. If it is found that the lands included as Nisga'a lands are found to be traditional lands of the Gitksan and Gitanyow people, then the Nisga'a are to be equitably compensated for losing land to which they never actually had governing rights.

To clarify that, I fully understand, as the counsel for the Nisga'a have explained to me and to others on the committee that if they have no rights to the land, they will not be compensated. If they have rights to the land and other people also have rights to the land, I believe the Nisga'a can be compensated. That is a direct version of the compensation in sections 33, 34 and 35.

What about the Gitksan and Gitanyow? They get back what rightly belonged to them, but are they compensated for the trouble and expense they went through to reclaim their lands? The simple answer is no. How are they to claim title to these lands? They have to go through the courts. How else would they do it, unless there is another solution about which we are not aware?

The method by which the Government of Canada has dealt with the overlapping land issue has been the subject of judicial commentary already. In 1998, the Gitanyow First Nation began lawsuit against the federal and British Columbia governments as well as the Nisga'a, requesting a court declaration that the governments involved owed the Gitanyow people the assurance that bargaining would occur in good faith. The Gitanyow allege that because the governments entered an agreement in principle with the Nisga'a — now the Nisga'a Final Agreement that



before us today — the governments have fettered their discretion to bargain in good faith with the Gitanyow. The governments abandoned their negotiations with the Gitanyow and Gitxsan that had been going on at the same time as the Nisga'a negotiations. As we learned from the Minister of Indian Affairs and Northern Development, he and the government chose sides in the land dispute and went on to enter into an agreement with the Nisga'a.

The point being made in the lawsuit is that if there is a duty to negotiate in good faith with the Gitxsan and the Gitanyow, the government could not choose sides in the land ownership dispute. The Gitanyow allege that by this Nisga'a agreement their aboriginal title to land in the Nass Valley has been violated.

When the lawsuit began, the Governments of Canada and British Columbia brought a preliminary motion to strike out the Gitanyow statement of claim as disclosing no cause of action. The court held that the statement of claim was valid as it related to the issue of the two governments making it impossible to bargain in good faith because they had already reached agreement with the Nisga'a. The judge held that, arguably, the duty owed by the governments is to "conduct treaty negotiations in good faith and in a manner which will take into account all aboriginal nations which have a claim in a specific area."

This, I submit, was not done in the case of the Nisga'a, Gitanyow and Gitxsan. The judge in this case, the *Luuxhon* case, and the famous *Delgamuukw* case made it clear that the courts would prefer that all outstanding claims to land ownership were to be settled among the parties without resorting to litigation. When this case eventually went to trial, Mr. Justice Williamson of the B.C. Supreme Court had to determine whether there was a duty of the governments to negotiate in good faith a treaty with the Gitanyow.

The position of the Government of Canada as explained in Mr. Justice Williamson's decision is hard to believe. He wrote:

While there is a moral obligation —

— so Canada argued —

— there is no legal obligation to negotiate in good faith.

This is the position of the Government of Canada in relation to the land claims negotiation with the aboriginal neighbours of the Nisga'a. When the government chooses sides, it shows no mercy. Fortunately, Mr. Justice Williamson did not buy the government's argument, stating at paragraph 53 of his judgment:

I conclude that the duty to negotiate in good faith, founded upon the fiduciary relationship between aboriginal people and the Crown, applies equally to the Crown in Right of Canada and the Crown in Right of British Columbia.

He went on to define the duty at paragraph 74, stating:

In general terms, that duty must include at least the absence of any appearance of "sharp dealings", disclosure

of relevant factors, and negotiation "without oblique motive".

Honourable senators should know that the Crown is appealing this decision, unfortunately.

When one aboriginal nation must use the courts to define the duty to negotiate owed by the federal government in relation to land claims, we are in a sorry state. That is why I believe that all outstanding land ownership issues must be settled before a settlement offer is concluded.

**Senator Austin:** Is the honourable senator referring to the whole province of British Columbia?

**Senator St. Germain:** Certainly, all outstanding land ownership issues as far as overlaps must be settled.

**Senator Austin:** Just to be clear, is he referring to land ownership issues affecting the Nisga'a or the whole of British Columbia?

**Senator St. Germain:** It is my belief that all outstanding land ownership issues must be settled before a settlement offer is concluded under the B.C. Treaty Commission. The Nisga'a are not motivated to open up the issue. The federal and provincial governments believe they do not have to bargain in good faith. The only avenue left for the Gitxsan and Gitanyow is the courts.

Why force them to go to court when the remedy is so simple? We could wait and have them settle this amongst themselves. Just wait on Bill C-9. That will make the parties focus quickly.

• (1600)

We cannot continue to deal with Canada's aboriginal people in this way. We must ensure fairness. The government will not follow a doctrine of fairness, therefore, it is left to us in the Senate to impose one. If we are prudent, we should obtain an advance ruling before we make a move, get a solution on the overlaps, then decide on the legislation. There may be a delay, however, our mandate compels us to do our due diligence.

Honourable senators, that is our duty to this chamber, to Parliament, to the people of Canada, and certainly to the people our decisions will most deeply affect — the people of British Columbia and the people of the Nass River Valley. If we do not proceed with prudence, then the settlement of native claims will be set back for at least as long as it took this issue to get to this point. I do not believe that is the solution. I predict few settlements being reached while the Nisga'a agreement is tied up in the courts.

This bill, the agreement, and the treaty do not achieve certainty, finality, clarity or accountability in their entirety. This is not an agreement that we can point to as a guide or the template to achieve lasting good faith negotiations of which all Canadians can be proud. The process in this agreement must be improved. The legislation must allow for future improvements when important circumstances warrant.



Honourable senators, let us do the right thing. Let us facilitate the parties moving to the negotiating table. The parties have the ability and the focus to determine the equitable solution. It is then and only then that we can be satisfied with honouring treaty rights in the legislation.

This, honourable senators, is such an important issue and will have such a negative impact on all groups where overlaps exist. Both the Gitanyow and the Gitksan have agreed on an arbitrated settlement if given the chance. Let me repeat that: The Gitanyow and the Gitksan have both agreed on an arbitrated settlement if given the chance. This may not settle the constitutional aspects or other aspects, but my main concern personally is the overlap. It definitely goes a long way to negotiating aboriginal rights, I believe, if we go that route. Remember, it is one of our chief justices who said that "we are all here to stay."

#### MOTION IN AMENDMENT

**Hon. Gerry St. Germain:** Honourable senators, in the spirit of prudence and satisfaction, so that we can have certainty and finality, and in order to give the government the opportunity to consider requesting a reference from the Supreme Court of Canada on the constitutionality of the jurisdictional issues, including paramountcy or whatever is set out in the Nisga'a Final Agreement, but mainly because of the overlap, I move, seconded by Senator Andreychuk:

That Bill C-9, an act to give effect to the Nisga'a Final Agreement, be not now read a third time, but that it be read a third time this day six months hence.

**Some Hon. Senators:** Hear, hear!

**The Hon. the Speaker:** Is it your pleasure, honourable senators, to adopt the motion?

**Some Hon. Senators:** Agreed.

**Some Hon. Senators:** No.

**The Hon. the Speaker:** Those in favour of the motion will please say "yea".

**Hon. Jeremiah S. Grafstein:** Honourable senators, I thought we might have an opportunity to explore this interesting turn of events for a moment or two, if we might.

I listened with care to the Honourable Senator St. Germain's exposition. I find it a little complex and a little confusing, in the sense that on the one hand he seems to attack the governance pillar and on the other hand leaves the land claims pillar alone. The honourable senator then attacks the land claims pillar by saying that the overlap makes it impossible to deal with the land claims issue. It strikes me that that puts us in a more intense state of stasis than the honourable senator suggested the government was doing.

I want to deal with the honourable senator's solution to all this, which is to now say to all of us here to abrogate our own  
[ Senator St. Germain ]

responsibilities and not vote on this matter until the courts — notwithstanding the fact that most of us here believe that Parliament is supreme — clean up our messy handiwork. Is that the honourable senator's position?

**Senator St. Germain:** Definitely not. I thank Honourable Senator Grafstein for his question. If anything, turning to the courts should be the last course of action. What I have said is that the Gitksan and the Gitanyow have both said that they would agree to binding arbitration if they were allowed to present their case, their history, regarding their land claims. That is the route that I recommend. It is for that reason that I moved that there be a six-month hold on the bill, so that these people can go to arbitration on the overlap issues, on the lands that are overlapped by the Nisga'a agreement on the Gitanyow and Gitksan.

Honourable senators, I may have misstated something in my speech, however, there is no way that I meant to suggest litigation. One of the most debilitating and sad parts of this whole process is that we are forcing these people into litigation and into the courts if we allow this to proceed immediately. It is for that reason that I suggest strongly that the only course of action at this stage is to an arbitrator, which both sides that are afflicted have said they would accept.

**Senator Grafstein:** Honourable senators, my confusion increases, but that may not be the fault of the honourable senator opposite, it may be my limited ability to understand what he is saying.

As I understood the evidence, I did not hear either the Gitksan or the Gitanyow say that they were prepared to go to binding arbitration for these overlapping claims. As a matter of fact, what I heard is that they did not object to this treaty or to this piece of legislation. That surprised me because the senator knows my concerns about this bill. I remain confused by the position of the honourable senator.

**Senator St. Germain:** I am more confused by the question of honourable senators. The fact remains that I respect the position of Senator Grafstein, and I think the honourable senator put excellent points forward during the deliberations. This is not a question of opposition going back and forth, it is a question of clarification. As I said, if the honourable senator misunderstood what I said, there is no way in the world that I would ever suggest litigation. I have never been in litigation in my own business life, and it would be the last thing that I would ever suggest to anyone else.

I say to the honourable senator that I believe the Gitksan were asked a question in the committee in regard to arbitration. Elmer Derrick, who was representing the Gitksan, clearly stated that he was prepared to accept the decision of an arbitrator. Whether or not the honourable senator could be correct on this, I spoke to the representatives of the Gitanyow and asked them emphatically the question: Would you accept arbitration? They said they would. However, honourable senators, whether, in fact, that was actually in committee or not, I am not certain.

**Hon. Jack Austin:** I believe that Senator St. Germain will recall that Minister Nault made it absolutely clear that he would not contemplate a recommendation to the Governor in Council with respect to a reference to the Supreme Court of Canada. I believe that the honourable senator, having participated actively in the evidence given by the Nisga'a Tribal Council, will recall that they want to stand with the agreement as it is and that they have no intention of arbitrating the claims. I have the same recollection as Senator Grafstein. I did not hear the Gitanyow or the Gitxsan make an unconditional offer to arbitrate, not that that would have affected the points I have just made. Senator St. Germain asked the question: "Would you be prepared to arbitrate?" They said: "Oh yes, we would be prepared to arbitrate." However, Senator St. Germain has not chosen an arbitrator, there is no process of arbitration and no question framed. What he wants to do is to stall and delay this particular agreement.

• (1610)

What will Senator St. Germain do with the decision of Mr. Justice Williamson of the Supreme Court of British Columbia, to the effect that he will not deal with the case commenced by the B.C. Liberal Party, to test the constitutionality of the bill, until the bill is passed? In other words, as far as the judge is concerned, the proposed legislation raises moot questions. He wants an actual piece of legislation before him.

What the honourable senator is proposing is an amendment which is designed, effectively, to wreck the bill, to destroy the process of treaty negotiations in the province of British Columbia, to arm those who have no intention of ever seeing section 35 aboriginal rights in the area of self-government ever established, and who do not want section 35 constitutional protection but rather delegated power, power that can be pulled up and down or pulled away at any time. It is entirely contrary to the spirit of the legislation and the public policy requirements in aboriginal affairs with the Province of British Columbia.

**Senator St. Germain:** Honourable senators, the arbitration act of the Province of British Columbia would provide all the guidance.

During discussions in committee, the question was asked about who would be the arbitrator. The witnesses assumed that it would be another white person. I said: "No, it does not have to be a white person. We could name aboriginal persons to chair the board of arbitration and to serve as members on the board." I would say the honourable senator's statements in this regard are a red herring.

To say that certainty is required. I return to what I said before, that the Sechelt, Sahtu and the other agreements are in great jeopardy. If they do have the certainty required, I do not see them as being any different from the Nisga'a or any other native bands or groups in our country. Aboriginals are aboriginals. If one has a constitutionalized type of authority, they should all have it. If some have delegated authority, why is there the difference? That is the question we continually ask. It does not seem that we will ever receive the answer.

As far as the B.C. Liberals are concerned, the honourable senator has as many friends in that gang as I do, and perhaps more. As far as I am concerned, I am asking for this delay because the government may send a reference to the Supreme Court, and perhaps they will not. The fact is, I am asking for the time to force the natives back to the table to negotiate the overlap situation.

As I said earlier, honourable senators, let us delve into this subject. We are discussing a huge block of land. In the negotiations, the Nisga'a were given rights to Gitanyow territory, to five fee simple pieces of land to the tune of a couple of hundred hectares as well as one island on Kwinageese Lake, which was part of the Gitxsan territory and the *Delgamuukw* designated area within the Gitxsan area. The honourable senator says that the bargaining was done in good faith and that we could have changed it when fee simple land that was in dispute was given out. This is the subject I would like to see brought to the fore.

I have been consistent on the issue of overlap. The worst thing we could do is pit natives against natives and to tell them the only way they will be able to defend their property is on the ground. Honourable senators know what that means.

I have said to the honourable senator before the committee that we are possibly creating another Palestinian-Israeli situation in regard to land battles. That analogy may be extreme, but there is a possibility. We have had problems up there before.

**Senator Austin:** Honourable senators, I do not doubt the honourable senator's sincerity. He has actively pursued the interests of the Gitxsan and Gitanyow throughout the evidence. He has focused on their concerns.

The Gitxsan and the Gitanyow have had years to reach a conclusion with the Nisga'a. Negotiating with the Gitanyow continues to be a possibility, as both they and the minister acknowledged in the evidence.

The Nisga'a have no intention of submitting these overlapping claims to arbitration. They have an intention to continue the negotiations once the bill is passed.

The honourable senator's amendment is completely without useful effect. I would never advise the Nisga'a to accept the amendment of the honourable senator. This bargain was struck in good faith between the Government of British Columbia, the Government of Canada and the Nisga'a. If it is to be changed through negotiations, it must be with the willing participation of the Nisga'a; otherwise, it will be changed through the litigation process, which the honourable senator deplores, and I would not be happy to see it take place.

I believe that this amendment would destroy the very objective the honourable senator is seeking. The Nisga'a will not be forced into arbitration and the Government of Canada and the Government of British Columbia will not force them into arbitration. The Nisga'a will, of their own free will and good judgment, have further talks with the Gitxsan and the Gitanyow if there is no undue pressure.



Again, I believe the honourable senator's proposed amendment is harmful to aboriginal relations in British Columbia.

**Some Hon. Senators:** Hear, hear!

**Senator St. Germain:** I find that very surprising.

**The Hon. the Speaker:** Honourable Senator St. Germain, I wish to point out that there is one minute left in your 45-minute speaking period.

**Senator St. Germain:** Honourable senators, I know the Nisga'a will not relinquish what they have, once they have this final agreement. In any dispute like this, when somebody is put into a preferential position, whether by government or someone else, there is no incentive to negotiate? It does not make sense. If they would not negotiate before, why in God's name would they negotiate later? That is what we are saying.

The honourable senator says the Nisga'a will not go to arbitration. I do not blame them. They might lose in arbitration because of the oral history and the totem poles.

If the Gitanyow are prepared to subject themselves to the decision of an arbitrator, I cannot think of anything more fair. That would remove the possibility of litigation. Senator Grafstein cannot understand me and I cannot understand the Honourable Senator Austin on this position. Perhaps we should all sit down around the table and try to figure this out. This just does not make sense.

**The Hon. the Speaker:** Honourable Senator St. Germain, your speaking time has expired. Are you seeking leave to continue?

**Senator St. Germain:** Honourable senators, I seek leave to continue.

**The Hon. the Speaker:** Honourable senators, is leave granted?

**Hon. Dan Hays (Deputy Leader of the Government):** I propose that we extend the time for another 15 minutes.

**The Hon. the Speaker:** Is it agreed, honourable senators, that we extend the time for a further 15 minutes?

**Hon. Senators:** Agreed.

**Senator St. Germain:** I thank honourable senators for their indulgence.

**Senator Austin:** Could I just say that the Nisga'a will not arbitrate, nor should they. The amendment is a total nullity. It will have no beneficial effect. I propose that the Honourable Senator St. Germain withdraw it.

**Senator St. Germain:** Honourable senators, I will not withdraw my amendment.

[ Senator Austin ]

When we asked the minister whether he would fund these people to defend their land claim, he did not respond. Therefore, I ask the honourable senator whether the minister will fund them. He says he does not represent the government but he is speaking on their behalf. The question is: The honourable senator is saying that the parties should go to litigation. How can they go to litigation if they have no money?

• (1620)

**Senator Austin:** I am sponsoring the bill, but I do not speak for the government. I have no idea what they will do in terms of funding litigation for any aboriginal community.

**Senator Hays:** Honourable senators, if we are at the end of questions and comments, it is obvious that other senators wish to speak to this amendment. My understanding is that the Honourable Senator Austin would move adjournment of the debate. Senator Beaudoin may also wish to speak.

**Hon. Gérald-A. Beaudoin:** Honourable senators, I wanted to move the adjournment of the debate.

**Senator Hays:** Why do we not follow the practice of alternating speakers? If there is no first speaker here in response, then we would agree to you going next, Senator Beaudoin.

On motion of Senator Austin, debate adjourned.

## BILL TO GIVE EFFECT TO THE REQUIREMENT FOR CLARITY AS SET OUT IN THE OPINION OF THE SUPREME COURT OF CANADA IN THE QUEBEC SECESSION REFERENCE

SECOND READING—DEBATE CONTINUED

On the Order:

Resuming debate on the motion of the Honourable Senator Boudreau, P.C., seconded by the Honourable Senator Hays, for the second reading of Bill C-20, to give effect to the requirement for clarity as set out in the opinion of the Supreme Court of Canada in the Quebec Secession Reference.

**Hon. Noël A. Kinsella (Deputy Leader of the Opposition):** Honourable senators, rarely during the past 133-year history of the Senate of Canada have we been called upon to examine a more dangerous legislative proposal than Bill C-20. The danger of this bill is twofold. First, it speaks to the matter of the secession of a province from Canada. Second, honourable senators are being called upon to give the consent of this house to a historical reduction of the voice of this upper chamber of the bicameral Parliament of Canada.

Honourable senators, on the first matter, and in the words of the second preambular paragraph of the bill before us:

Whereas any proposal relating to the break-up of a democratic state is a matter of the utmost gravity and is of fundamental importance to all of its citizens;



Honourable senators, given that these words speak to the breakup of Canada, it is surely axiomatic, if anything is axiomatic, that the Senate of Canada is being called upon to analyze and give an in-depth reflection to a legislative proposal that touches on a matter of the utmost gravity.

Honourable senators, the record of our study and sober second thought will be a record of the value of the Senate in our bicameral system of Parliament. Yes, Hansard will demonstrate the thoughtful, acute and in-depth analysis which this second House of Parliament will have given to a proposal which addresses the survival of Canada as a unified country.

On the second matter, our debate will be a watershed or a turning point in the history of the Senate of Canada because this legislative proposal attempts to redefine and restrict the role of the Senate here at the beginning of the 21st century.

Argument has already been advanced concerning a theory of responsible government which, if left unchallenged, would fundamentally alter the manner in which the bicameral Parliament of Canada itself holds the government or the executive power to account. I am confident that all honourable senators shall, in this precedent-setting debate, rise to the challenge and meet this test of history.

Let me turn to the first issue, honourable senators, which is clarity. Clarity, clearly, is popular. It would appear that Bill C-20 itself is very popular across Canada. Honourable senators, I ask: Is it proper? At first glance, and if this bill is presented as a so-called "clarity act", it is indeed very appealing. Everyone is in favour of clarity. To be opposed to clarity on whatever matter would be distinctly anti-intellectual and quite unreasonable. However, my analysis of this bill raises many concerns and demonstrates a lack of clarity. My study also indicates that there is much to be concerned about as Parliament considers whether or not to establish a statutory process and a legal right to secession, for if we do this it will be for the first time in Canada's 133-year history.

Honourable senators, I ask: Does Bill C-20 bring clarity to the matter? The government has successfully led many Canadians to believe that Bill C-20 will bring clarity to the process of a province seeking to secede from Canada. Unfortunately, what this bill actually does is to give a false sense of security, to give a facade that everything will be okay, everything will be just fine. The bill is a masterpiece of political ambiguity, and it is very difficult to determine if the Government of Canada knows exactly what its own real goal is with this bill.

Furthermore, honourable senators, I am reminded by W.P. Kinsella's passage in *Shoeless Joe* that "If you build it, they will come and use it." We also recall the dynamic of the self-fulfilling prophesy mechanism which is documented by social scientists. Therefore, it is of grave concern to me that Parliament would, for the first time in our history, erect the stage upon which, if used, would be played out the breakup of Canada.

Few federations acknowledge the right of a member state or province to leave, let alone set up the process by which this can

be done. By setting out the conditions for secession, no matter how stringent, this government might find short-term appeal for this in some parts of Canada. However, it will at the same time, with this bill, fundamentally damage the real structures holding our country together.

In his article entitled, "Clarity and Confusion", which appears in the February 2000 edition of *Diplomatic International Canada*, David Jones, a former political minister counsellor at the United States Embassy in Canada, has written:

Ultimately, there are only two ways to maintain national unity: force or persuasion.

All in this chamber abjure maintaining national unity by force. Rather, Canadians have always and must continue to rely on persuasion.

• (1630)

My first approach to the bill was to recognize that its proponents claim that it rests on the advisory opinion of the Supreme Court of Canada. The question that, therefore, presents itself is whether there are fault lines in that advisory opinion. Indeed, what is the status of an advisory opinion of the Supreme Court as compared with a judgment of the Supreme Court? Honourable senators, there are several major fault lines in the advisory opinion in the Quebec reference case. Therefore, the bill, to the extent that it is resting on this foundation, is standing on faulty ground. As compared with a judgment of the highest court in Canada, an advisory opinion of the court is simply that — advisory. Indeed, the Honourable Antonio Lamer publicly expressed his views on this fact. One need not treat this advice with the same degree of acceptance as a decision of the Supreme Court. We should recall, as in the recent *Marshall* case, that the Supreme Court, after making a decision, can clarify or make changes to an earlier decision.

In looking at the advisory opinion of the court, consider what is called "reading in." The court was placed in the unenviable position of having to reply to the reference questions submitted to it by the Government of Canada. It is, however, important that we recognize that the court has attempted in this advisory opinion to use that technique of "reading in" to legislation that which is not contained therein. Many commentators find this type of judicial activism to be dangerous and to be undermining of the functions of the legislative branch in our system of governance.

Honourable senators, if there is a concern with this approach of the court to "read in" provisions not contained in ordinary statutory law, then, *mutatis mutandis*, there must be a grave concern if the court attempts to "read in" provisions of constitutional law that are not expressly provided in the Constitution. In other words, the attempt by the court to "read in" to the Constitution of Canada provisions that are not part of the Constitution could be a dangerous attempt at constitutional amendment that bypasses the proper constitutional amendment process.

Our constitutional amendment process is designed to ensure that changes to our fundamental law will occur only after careful federal-provincial steps are followed, steps that involve the various legislatures and Parliament. Constitutional amendments ought not to be allowed to be bypassed by a judicial "reading-in" by the court.

In this opinion, the court attempts to "read in" to the Constitution that a secessionist movement in Canada be accorded the right to obligate the rest of Canada to negotiate the breakup of Canada. Honourable senators, neither the Constitution Act of 1867, the Constitution Act, 1982, nor the written and unwritten rules and principles of the Constitution provide for such a provision. The advice of the court would require "reading in" such a provision.

A comparative study of this point in constitutions such as those of the United States of America or the Republic of France will demonstrate that not only do these constitutions not provide for secession, their respective Supreme Courts would not be allowed to read in any such provision. We might recall from a case in the United States in 1868, *Texas v. White*, that famous line of the United States Supreme Court, "The union is indestructible."

That brings me to the principle of the divisibility of Canada. One major fault line in the advisory opinion of the court, and consequently a faulty foundation principle of Bill C-20, is the assumption that Canada is divisible. The analysis of the political theory developed by the court on federalism, democracy, constitutionalism and the rule of law led it to develop an opinion which, by implication, accepts the principle that Canada is divisible. Fortunately, the court's view is only an opinion.

Consider, honourable senators, that the Supreme Court of the United States of America and the Constitutional Court of the United States of Mexico, the other two great federations with which Canada shares this North American continent, federations in which also the rule of law, democracy and constitutionalism are shared values — these federations do not have the high court nor their respective governments or legislatures accepting the principle that their federations are divisible; nor should Canada.

Where in the advisory opinion of the court is there a call for statutory action? The advisory opinion, to my reading, neither envisages nor suggests that there should be legislation adopted by Parliament to give statutory expression to this opinion. Indeed, the former chief justice expressed surprise that such a step was undertaken by the government.

Furthermore, honourable senators, where is the constitutional authority for this proposed legislation to be introduced here in Parliament? The advisory opinion of the court does not indicate any constitutional authority on which to base the legislation that has been introduced by the government. As my colleague Senator Nolin asked of the sponsor of the bill here in the Senate:

Parliament has been asked to decide on the possible secession of this country. On what constitutional authority is the government relying to introduce such legislation?

[ Senator Kinsella ]

Honourable senators, I ask where in the Constitution or where in the Parliament of Canada Act or where in the customs and usages of Parliament does the executive or legislative power have the right to bring forward legislative proposals that will facilitate and make legal the breakup of Canada?

**The Hon. the Speaker** *pro tempore*: Honourable senators, I am sorry to interrupt the honourable senator but his 15 minutes are up.

Is leave granted for the honourable senator to continue?

**Hon. Senators:** Agreed.

**Senator Kinsella:** Honourable senators, the mandate of Parliament is to pass laws that the majority of both houses judge to be in the best interests of Canada. This bill is obviously not in the best interests of Canada because it speaks to the steps to destroy Canada. Even the peace, order and good government provisions of section 91 of the Constitution Act, 1867, do not justify the breakup of Canada. Therefore, this bill, in my view, is *ultra vires* Parliament and should not proceed through this house.

Mention has already been made that it is difficult to see the advice of the court on the matter of the amending formula. The advisory opinion indicates the need for a constitutional amendment at the end of their envisaged process and one would have expected that the court and the proponent of this bill would have set out the circumstances detailing which of the amending formulae would apply. The court does not indicate which amending formula would apply; nor was the sponsor of the bill in the Senate able to tell us when I asked him.

• (1640)

Honourable senators, why introduce this bill? Having made the decision to submit the Quebec reference to the Supreme Court for an opinion, and having received that opinion which purports to give a new constitutional right to negotiations to the secessionist movement, what motivated the government to not give the secessionist movement the statutory right to secession? The Leader of the Government in the Senate, who is also the sponsor of this bill, stated in his remarks at second reading:

The constant threat of a third referendum on Quebec secession in less than a generation leaves us no responsible choice but to act now, and before the crisis atmosphere of referendum campaign. The Prime Minister of Canada asked the Premier of Quebec to agree to a commitment not to hold a referendum in the Premier's current mandate. The Premier refused, forcing the Government of Canada to proceed with this bill.

Honourable senators, the issue raised there is what might be called the "shelf-life" of a referendum result; that is, for how long is the result of a referendum good? Bill C-20 is completely silent on this matter, notwithstanding the sponsor of the bill in the Senate telling us that this was one of the motivations for the bill.



I turn the attention of honourable senators to why I believe that Bill C-20 facilitates the secessionist movement. The proponent of this bill would lead us to believe that, by adopting it, things will be better for national unity in Canada. I fear, honourable senators, that the opposite is the case. The Supreme Court itself, in its advisory opinion, upon which the government tries to rely in this bill, states in stark and unambiguous terms that, notwithstanding the envisaged process, unconstitutional secession remains possible. Unfortunately, honourable senators, a unilateral declaration of independence is now made more likely should the provisions of this bill become law.

Here is what the court states in the last paragraph of its advisory opinion. In paragraph 155 the court said:

Although there is no right, under the Constitution or in international law, to unilateral secession, that is secession without negotiation on the basis just discussed, this does not rule out the possibility of an unconstitutional declaration of secession leading to a *de facto* secession. The ultimate success of such a secession would be dependent on recognition by the international community.

This is what the court told us after its long discussion on the process it envisaged.

Honourable senators, I have on the wall of my office a framed copy of the American Declaration of Independence. There are two stickers on it. One says "UDI" and the other says "Illegal and Unconstitutional".

Bill C-20 does not rule out the possibility of an unconstitutional declaration of secession, but the steps outlined in this bill make such an eventuality more probable. Why? How does Bill C-20 facilitate the secessionist movement?

The answer flows, honourable senators, from the inherent logic of the three steps for legal secession provided for by the bill. The mechanism of the bill for dealing with the adjudication of the clarity of the question creates an advantage for the secessionist movement by co-opting the federal government and Parliament into being a player in the secessionist process. If the House of Commons gives preapproval to a referendum question, this by itself is a major gain for the secessionist province. It is equally a major loss for Canada because, having granted preapproval, the rest of Canada will not be able to challenge the question. It is also important to note that what might be considered clear in Ottawa is not necessarily clear in other parts of Canada.

Imagine, honourable senators, the confusion if some of the provinces, for their own particular reasons, disagreed with the House of Commons on the clarity question. Then consider the next step, honourable senators. If the federal government refuses to work with the secessionist province in determining the clear question, the international community will be told that Ottawa is acting in bad faith, thereby making it much easier for the international recognition to occur as indicated by paragraph 155 of the court's opinion. In other words, the bill gets the international community off the hook. They will be told by the secessionists that they are following the law of Canada and therefore, in terms of international diplomacy, it will make it easy for the international community to grant the recognition.

The provisions of the bill dealing with the assessment of a clear majority of a referendum result once again plays right into the hands of the secessionists. It allows the secessionist movement the opportunity to seek international recognition because of the majority, whatever that majority number may be.

Consider, honourable senators, the membership of the Francophonie. Without naming countries, how many of them would require a majority of 50 per cent plus one for the recognition of a secessionist province? Consider the general who is the head of state of a given country, a leader who has the support of only 12 per cent of the vote but has the army on his side. How will such a leader view a 50-per-cent-plus-one result? The international community, honourable senators, will have little difficulty in giving recognition under these circumstances. We ought not fool ourselves.

The bill speaks to the process of negotiating secession with a province. Up to this time, all Canadian prime ministers have consistently refused to agree to any such negotiation. Furthermore, given the plethora of examples of failed Canadian political negotiations, the chances of successful negotiations are remote. Witness all the failed negotiations, in many of which some honourable senators have participated, on matters that we across Canada agree on. This part of the process, as set out in the bill, once again gives the separatist movement another golden opportunity to argue bad faith in negotiations and then call for recognition by the international community.

The sixth preambular paragraph of the bill asserts:

...the secession of a province, to be lawful, would require an amendment to the Constitution of Canada.

Such a constitutional amendment must involve the provinces. However, again, the record of constitutional discussions among the provinces and the federal government is more a history of disagreement than a story of agreement. So, again, the seceding province will have the opportunity to say to the international community: "See, we have attempted to follow the federal secession law but the required constitutional amendment is not forthcoming. Therefore, give us recognition." Thus, again, the scenario foreseen by the Supreme Court in its opinion at paragraph 155 becomes more plausible.

Honourable senators, I will turn for a moment to the matter of who shall determine the clarity of the question. Who are the "political actors" who shall be involved in the determination of the clarity of the question?

• (1650)

The seventh preambular paragraph, and also clause 1 of the bill, as we all know, limits this to members of the House of Commons. It seems to me that it is a classical non sequitur of logic for the bill to state, in the second preambular paragraph, that the matter of secession is of the utmost gravity and then to exclude one of the two Houses of Parliament from a determinative role. Honourable senators will recall that the Supreme Court in its opinion at paragraph 32 pointed out that there are four fundamental and organizing principles of the Constitution, including respect for minorities.



The Senate of Canada has been an integral part of our bicameral Westminster model of parliamentary democracy since 1867. Indeed, the very establishment of the Senate was one of the keys to the bringing about of Confederation. Throughout our 133-year history, it has been the Senate that has defended the rights of regions and ensured respect for minorities. It is, therefore, critical that the Senate of Canada play a determining role in a matter as important to minorities in regions of Canada as the secession of a part of Canada.

The mover of the bill in the Senate has attempted to argue that only the executive power has any mandate to conduct constitutional negotiations and that it was not necessary to limit this mandate as proposed by the bill. We must remind the honourable senator that under our system of governance it is not one wherein Parliament has no supervisory role over the political aspects of constitutional negotiations. Rather, our parliamentary system is one in which the Senate and the House of Commons provide significant supervision of the activities of the executive. Even had the government not introduced this measure, which I would have preferred it did not, it would not mean that the executive power would have been free of supervision by Parliament.

Indeed, one of the major functions of this house since Confederation and today is precisely to supervise the political process and the exercise of power, not only by the executive but also its exercise by the lower house. In the matter before us, the court has stated that it has no supervisory role. If both Houses of Parliament did not have this role, the government, which controls the House of Commons, would be totally unaccountable, a situation, no doubt, longed for by certain officials in the Langevin Building, but not one that is in the best interests of Canada.

The fact that our Standing Senate Committee on National Finance is currently examining the Estimates, and that the other day we voted on supply, or that the Leader of the Government in the Senate daily replies to questions and gives an account of government activities, would surely provide prima facie evidence and underscore the supervisory role of this chamber. Indeed, the role of the Government Leader in the Senate is not only one in which he or she represents the government in the Senate but also represents the Senate at the cabinet table. I shall return to this important issue shortly, honourable senators.

The drafters and proponents of the bill tell us that they have remained faithful to the advisory opinion of the court in drafting this legislative proposal. However, if you examine, honourable senators, who the court stated ought to be involved in determining the clarity of a referendum question and the clarity of the result, the court stated that it would be the political actors who make this determination.

At paragraphs 100 and 153 of the court's opinion, honourable senators can read:

...it will be for the political actors to determine what constitutes 'a clear majority on a clear question' in the circumstances under which a future referendum vote may be taken.

[ Senator Kinsella ]

Minister Dion's published notes, which I took off the Web on January 14, 2000, explicate the bill with references to this matter. His notes state clearly that with respect to the seventh preambular paragraph and clause 1, concerning that only members of the House of Commons have a determining role in the clarity of the question and the result, the drafting for those sections — and this is the minister's own notes — comes from paragraphs 100 and 153 of the court's opinion.

Honourable senators, I invite you to read those paragraphs and read the bill.

It gets worse. On page 2, in the second paragraph, the drafters write:

Whereas, in light of the finding by the Supreme Court of Canada that it would be for elected representatives —

It is there in black and white. The drafters, I submit, have not remained faithful to the expressly written opinion of the court. The court said political actors. The court did not limit this determining judgment on the clarity of the question or the clarity of the result to elected representatives.

Honourable senators, the mover of the bill in the Senate in his second reading speech said:

How would the process begin? Who would make the original evaluation about whether there was a clear majority on a clear question? Who, in the view of the court, are the political actors who would have the obligation to make such decisions? Though the court does not answer this question directly —

Indeed, the court does not list who the "political actors" are for it is self-evident that the political actors at the provincial level are the members of the legislative assemblies and that at the federal level they are the members of the Parliament of Canada — senators and members of the House of Commons.

Senator Boudreau, when referring to paragraph 101 of the advisory opinion, then weakens his case by attempting to argue that the phrase "elected representatives" is used by the court. However, honourable senators, read paragraph 101. If you read it, you will see that the court is discussing in that paragraph the issue of negotiations and the phrase "elected representatives" is used and restricted to negotiations which, at the end of the day, the electors can ultimately assess.

It is evident, honourable senators, that Bill C-20 does not follow the opinion of the court. The drafters of this bill are in error. They are in error in their attempt to try to exclude the Senate from a determinative role in the matter of the clarity of the question and the clarity of the majority. Perhaps sadly, honourable senators, it is a more serious error when this attempt to exclude the Senate is undertaken overtly, under the guise of claiming that the Supreme Court said that only "elected representatives" should play this role when, in fact, the court said no such thing.

• (1700)

Honourable senators, let us now turn our attention to the historic collateral damage that this bill threatens; that is, the threat of damage to the Senate, perhaps unintentionally. Nevertheless, Bill C-20 will, in its present form, do historical damage to the position of the Senate in our bicameral Parliament. Unless it is dealt with by the majority of the current sitting senators in this place, we will be judged by history as being accomplices to a serious impairment of the position of the Senate in the process of providing the oversight to government executive action. Unless the majority in this chamber acts, it will be during our watch that the Senate of Canada ceased to be an important part of the checks and balances which kept Canada a parliamentary democracy.

I must once again note that second preambular paragraph of Bill C-20, which states:

Whereas any proposal relating to the break-up of a democratic state is a matter of the utmost gravity and is of fundamental importance to all of its citizens;

It is simply inconceivable, honourable senators, that the Senate of Canada, one-half of our bicameral Parliament, would not have a determinative role in matters of the utmost gravity. If one is to accept this proposition, then one is diminishing the role of the Senate to deal with only the unimportant issues of the day.

Honourable senators, the consent of the Senate and the consent of the House of Commons constitutes the consent of Parliament. Where the consent of one house is sought, the consent of the other house must be secured before legislation can be given Royal Assent. An attempt to secure the consent of only one house on matters of "the utmost gravity" would be a very serious intrusion on the right of Parliament to have its consent protected.

In fact, if we follow the argument advanced by Senator Fraser last Thursday to its logical conclusion, we will have a two-tier legislative system in Parliament. At page 914 of last Thursday's *Debates of the Senate*, the honourable senator stated:

We do not block the clearly expressed popular will, even in matters where, in law, we have the power to do so.

The rest of the honourable senator's argumentation is so interesting that I think I should quote it in full:

Then there is the class of matters where we did not have that power — a class that is so fundamentally political that it is the exclusive prerogative of the House of Commons, the chamber of the people's elected representatives.

Essentially, that class consists of the two most basic elements of democratic government: The decision about who shall form the government, and the power of the purse. I find myself, however, powerfully affected by the argument

that the focus of Bill C-20, the government's approach to the possible secession of a province of Canada, is another such subject, something that is so fundamentally, inherently political, so directly and intimately bound up with the will of the people, that it, too, falls into that small but crucial class where it is the House of Commons and not Parliament as a whole that must take the decision and, of course, bear the responsibility for doing so.

Now, honourable senators, by that thesis, we have a crucial class of statutes, so crucial that one of the two Houses of Parliament can have no role. May I remind honourable senators that just in the last Parliament alone, on the Pearson bill and on the Electoral Boundaries Adjustment Act, two constitutionally flawed statutes, that the Senate did exercise its legislative power and defeat them. Are we now to ask to which class statutes belong when they arrive in the Senate, as well? We may have no power to initiate money bills; they are sent here to be dealt with. Are we now to inquire whether these fall into the untouchable class?

My colleague Senator Beaudoin, in his questions, developed that point very clearly. If we are to have a constitutional amendment to limit the power of the Senate of Canada, then let us have it, but surely the government should not be proceeding in this way by a simple statute. However, I will leave that argument to be developed further by Senator Beaudoin.

Political writer J.E. Hodgetts has written that the bicameral Parliament has a major responsibility to provide oversight and supervision of the government's actions. In quoting from Hodgetts:

Parliament is the legislature's capacity to act as the great debating, if not educational forum for the nation. This capacity, joined with the historic right to have grievances settled by the Crown before approving money in support of the Crown's activities, vests in the legislature not only the formal responsibility for approving statutes but also a continuing critical overseeing of executive actions.

Honourable senators, let us focus for a moment on the judgment or assessment by the Senate, whether on legislation or on resolutions, the judgment of the Senate. The assessment of this house on legislation or government actions has resulted in qualitatively different judgments than those judgments that are rendered by the House of Commons. We, in this chamber, would do well to recall that the Senate was established to provide what George Étienne Cartier called "A power of resistance to oppose the democratic element."

Honourable senators, on the wall of the Senate Speaker's chambers is that famous quote from Cicero:

Principum munus est resistere levitati multitudinis.

Translated, it means that it is our principle duty, honourable senators, to oppose the fickleness of the multitudes.



Honourable senators, it is Senator Boudreau's theory that because the House of Commons could adopt a motion of non-confidence in the government, this is the only leverage at play to ensure the principle of responsible government. I submit that is simply false. There are many elements at play under our system of governance and in which the principle of responsible government has evolved. Some scholars argue that with the shift of power to the centre and the control exercised by the executive over the legislature, there has been a significant lessening of governmental accountability to Parliament — certainly, little in the House of Commons. However, the power of the Senate to analyze and critique the government is an essential element in the series of checks and balances which keeps that awesome power of the government somewhat responsible, somewhat accountable. Indeed, the defeat of a major government measure in this place would speak directly to the legitimacy of that government's ability to continue.

The free trade agreement required a general election to intervene before the Liberal-dominated Senate agreed to adopt that measure. Had the GST not been adopted by the Senate, there surely would have been a question of confidence raised in the minds of Canadians. As honourable senators know better than I, governments are seldom defeated by Parliament. The fate of a government today is typically determined by a general election rather than a vote in Parliament.

• (17:10)

The author Punnett wrote that "the evolution of the Westminster system of government has left Parliament with the vital function of criticising and publicizing government activities." Thus, the modern role of Parliament is not to seek to overthrow the government but, rather, to hold the government accountable. That is what responsible government means in the world of the 21st century.

The argument of our colleague Senator Boudreau, that the Senate should not have a determinative role in Bill C-20 because it is not a house of confidence, is not persuasive.

Let me make a comment, and respectfully so, of the role of the minister in the Senate. The principle of our system of governance is that the ministers of the Crown are responsible to Parliament. The acceptance of the responsibility of ministers to Parliament as well as to the Monarch forms a main aspect of cabinet development in the Westminster system.

The fact that ministers are drawn typically from both Houses of Parliament demonstrates the capacity of the legislature to influence the executive. Many honourable senators are asking the following questions: What representations, if any, did the minister in the Senate bring to the cabinet table when this idea of trying to exclude the Senate from a determinative role in Bill C-20 was first raised? Did the minister articulate the purpose and place of this chamber in our bicameral Parliament? Did he explain the historic role of the Senate and the principles of

[ Senator Kinsella ]

consent, second sober thought, and protection of minority rights upon which the Senate operates? Did he underscore the oversight function that the Senate has in the series of checks and balances that keep within control the exercise of executive power? Or, honourable senators, did the Leader of the Government in the Senate find himself in a conflict situation? Did the impossibility of serving the Senate and aspiring for a place in the House of Commons place him in a conflict role and cause confusion?

The confidentiality that surrounds cabinet deliberations will not let us know what happened. What we do know is that the process that has led to the drafting of Bill C-20 has failed the Senate of Canada.

Honourable senators, Senator Boudreau attempts to argue that because the Senate has only a 180-day suspensive veto on matters of amendments to the constitution, therefore, it should not have a determinative role to play under Bill C-20. That argument, honourable senators, fails on several accounts. First, the fact that there is a six-month veto for the Senate in matters of constitutional amendment is no small power. Our colleague Senator Molgat, who chaired the Committee of the Whole examining the Meech Lake Accord, will recall the effectiveness of the six-month delay period. Indeed, it was during this period that the Meech Lake Accord began to unravel. When one adds this Senate delaying check for constitutional integrity to the additional checks provided by the requirement for support from resolutions adopted by provincial legislatures, number depending on which amending formula, then Senator Boudreau's case is weak indeed. Let us note that, with constitutional amendments, the provincial political actors have a real determining function, not merely a consultative role, as in the determining of the question of the majority in this bill.

Second, Senator Boudreau's argument also fails in its appreciation of the Senate's delaying power. At a time in Canadian history when the Prime Minister's Office dominates the House of Commons through a party majority that is controlled by its whip, the Senate of Canada remains the only real parliamentary limitation on the government's power. Furthermore, the Senate plays a critical role in explicating and analyzing government initiatives such that the people of Canada can be better informed of the issues before Parliament or the undertakings by the government.

Senator Boudreau asserts that it would be difficult "to fit the Senate in." Honourable senators, there are so many ways in which the Senate's judgment on the clarity of the question could be secured without delaying the time line envisaged by the bill. For example, there could be a fixed number of sittings in which each House of Parliament would make its determination, or we could consider a process by which both houses sit jointly in the determination of the clarity of the question. Honourable senators, with the talent in this chamber and with a minimal degree of creativity, other such models could and must be developed to maintain and secure the integrity of this house.



Let me conclude, honourable senators, by noting that the history of the Canadian adventure is a story of diverse peoples from diverse regions of the world living across a vast land in which regional and provincial differences have been accommodated by compromise and flexibility. This bill is a gift to the secessionist movement. This bill is a way out for the international community. This bill is a straitjacket for future prime ministers. Macdonald, Laurier, Pearson and Diefenbaker have, no doubt, turned over in their graves. Trudeau and Mulroney are surely saddened by this give-away to the secessionist movement.

Honourable senators, people of goodwill do not win battles either of weapons or of ideas by remaining perpetually on the defensive. To want no more than to stop secession thereby ensures that ultimately secession cannot be stopped. Far more important than any purported steps taken to lessen the threat or limit the challenge of secession are the positive aims, policies and visions which all the peoples of Canada wish to achieve themselves.

The appeal of the secessionist movement can only be challenged by providing all the peoples of Canada with something better to live by, something worth living for as Canadians. Our country cannot endure by negative measures. Rather, it will survive if it continues to be inspired by the enabling faith of our predecessors.

Canada now needs a new generation of political actors, men and women of goodwill, to draw more closely together in understanding, creativity and collaboration. Rather than presenting a bill that facilitates secession, rather than promoting legislation that, for the first time in the 133-year history of Canada, makes secession legal, rather than accepting the assumption that Canada is divisible, the government should be recognizing the right of the peoples of Quebec to self-determination and through positive, persuasive programs, based on the successful Canadian device of persuasion and compromise, fulfil the aspirations and dreams of all within an indivisible Canada.

• (1720)

The Supreme Court was asked for its opinion on what is essentially a socio-political question. The pith and substance of the Quebec reference case is situated within the historic claim of Quebec as a distinct society. What the government has given us in Bill C-20 is a statute that will make legal, for the first time in our history, a secessionist claim from any province and on any ground, even the simple ground of an economic objective.

In my opinion, honourable senators, the government, sadly, has lost its way, and the Canadian people, under the seductive guise of clarity, might well lose their country.

**Some Hon. Senators:** Hear, hear!

**Hon. J. Bernard Boudreau (Leader of the Government):** Honourable senators, would the Honourable Senator Kinsella permit a question or two?

**Senator Kinsella:** Of course, as many as the honourable senator wishes.

**Senator Boudreau:** The Honourable Senator Kinsella draws some scenarios and reaches some conclusions with which I take some exception. I will not follow all of the trails he set out, but there were two fundamental principles upon which he built his case.

The first fundamental principle was that Canada is indivisible. If we accept that principle, then what is the point of having legislation that deals with whether the question is clear or not clear and whether the required majority it is 50 per cent plus 1, or 80 per cent, or 90 per cent or whatever?

**Senator Lynch-Staunton:** Is the Leader of the Government asking himself that question?

**Senator Boudreau:** That is exactly the question.

Senator Kinsella is rejecting the bill on the principle that Canada is indivisible, and he cites the American constitution as an example.

**Senator Kinsella:** As well as the Mexican constitution.

**Senator Boudreau:** I am not sure the American constitution is an example that the Canadian people would be willing to follow. The Americans fought a civil war. In that civil war, more Americans were killed than in all of the other wars in their history put together. They fought that war because they believed that under no circumstances was their country divisible. I am not sure that is a principle that the people of Canada or, perhaps, honourable senators can accept.

On the honourable senator's point of rejecting the bill altogether, does he disagree with the leader of his party who favours a 50 per cent plus 1 test? Does he reject that test? As well, does he reject any formula, for example, that would see a two-thirds majority of all eligible voters casting a Yes vote on a clear question? Does he reject both of those options?

**Senator Kinsella:** I thank the honourable leader for his question. My position is that this bill ought not be proceeded with because it is *ultra vires* to the power of this house and, indeed, *ultra vires* to the power of the other place. That is my starting point. I do not think we have the authority to pass a law that is not in the best interests of Canada. Any law that has as its ultimate objective an orderly, legal breakup of Canada is not in the best interests of Canada.

Honourable senators, we only have authority to pass laws that are in the best interests of Canada. That is why I say I do not think we have the power, which was the question asked by Senator Nolin. Perhaps someone can point out to me where in the Parliament of Canada Act or the Constitution Act, 1867 or 1982, that authority is given to Parliament. I cannot find it.

The *realpolitik* we are dealing with in this house is that the opposition is in the minority. Thus, this bill is an awesome burden because of the collateral damage to the Senate of Canada. If not corrected, it will become an awesome responsibility on the shoulders of my colleagues, particularly my colleagues opposite. Hopefully, we will find the creativity to deal with that responsibility. If the majority decides to go forward, assuming that the matter is not *ultra vires* to Parliament, it seems to me it is a responsibility of the opposition to continue, in the epistemological sense of criticism, to improve a bad situation. It is much the same as the guidance we received from St. Augustine, who taught that even in evil we can find good. We must, therefore, deal with the kinds of amendments that could be brought forward. This is why we must amend the provision that has relativized the Senate. It is wrong-headed and not necessary. The same objectives can be achieved without doing that, and I have suggested a few such ways.

On the fundamental principle of my assumption that Canada is indivisible, clearly, I find fault with the opinion of the Supreme Court. To the extent this bill is resting on that foundation, if the foundation has fault lines, then this bill is being erected on those fault lines.

The burden of proof on those who wish to make this change is to prove that the country is divisible. My position is that it is indivisible, and I will sustain and argue that position. I believe that the people of Canada share the view that Canada is indivisible rather than divisible.

**Senator Boudreau:** Honourable senators, I appreciate that position. What I was asking for is the honourable senator's personal view. In this place, from time to time, we all make compromises on the result that emerges. I was interested in hearing his personal view on the issue of Canada being indivisible and that, therefore, no vote on any question with any percentage would lead to secession. I must say that I disagree with him. I am glad, however, that his personal view is clearly before us.

If this legislation is *ultra vires*, then the Supreme Court will pass the ultimate judgment on that point. It will probably do so much more capably — and I speak for myself — than I would be able to do.

However, now that we have established our fundamental disagreement on whether any result would justify negotiations, I wish to pose a second question. It, too, relates to the fundamental principle on which I think the honourable senator takes objection to the role of the Senate. He said that the Senate has traditionally exercised a supervisory role over constitutional negotiations by the executive. I can check that fact in the *Debates of the Senate* tomorrow. However, that was roughly the way I wrote down the honourable senator's remark. I said to myself at that point: How? What is the supervisory role that the Senate exercises today or has exercised in the recent past over constitutional negotiations? The honourable senator cannot mean legislative supervision because the bill does not impact on that capacity. It will still remain. Thus, since he is not talking about the legislative process, he must be talking about something else.

[ Senator Kinsella ]

Sure enough, in the next two or three sentences, the honourable senator cleared up what he was talking about. He said that in Question Period in the Senate, the Leader of the Government, as a minister, must stand up and answer the questions of honourable senators. In fact, that was one of the supervisory roles.

The second example the honourable senator gave had to do with our passage of supply bills. I suppose if we refused to pass such bills, that would create all sorts of problems. Currently, that is how the Senate apparently exercises a supervisory role over constitutional negotiations by the executive. My question is: How does this bill affect that supervisory role as outlined by the honourable senator? We will still have those examples tomorrow, next month, next year, and long after this bill passes. In fact, the bill has no impact, first, on the legislative side of the Senate's role and, second, on the supervisory role to which the honourable senator refers. In neither case does the bill have any impact on facets of our supervisory role. Where will the supervisory role of the Senate, traditionally exercised on the right of the executive to negotiate, be damaged?

• (1730)

**Senator Kinsella:** Honourable senators, this thrust had to be developed because of the faulty theory of responsible government the Leader of the Government in the Senate advanced during his second reading speech. The leader put forward that theory to attempt to justify the fact that the Senate would not have a determining role on the matter of the clarity of both the question and the result.

Honourable senators, it is my view that the Senate of Canada has a supervisory role. The Senate of Canada and the other place each have a responsibility and a duty to hold the government accountable. In our system, honourable senators, governments are not non-accountable. Some would like not to be held accountable, but our whole system of parliamentary democracy is based upon the principle of ministerial accountability.

This house, contrary to the view in some quarters — and this is a view that might have received some impetus in your theory of responsible government — has a supervisory role over the exercise of executive power. With reference to the exercise of executive power in the matter of constitutional negotiations, I agreed with the honourable senator when he said that it was not necessary for the government to have the approval, by legislation, of Parliament, to exercise that executive power to hold constitutional negotiations. I would have preferred that the government not bring in the bill and not try to fetter, but, even if it did not, it would not have been absolved from oversight by this house and from oversight by the other place. The executive power is not unaccountable power, even when the exercise of that executive power deals with constitutional matters. This is different from the amending process under the Constitution which requires a resolution of both Houses, although the resolution in this house, if not given, is effectively suspensive for 180 days.



Honourable senators, we must not allow the myth to be perpetuated that the Senate of Canada does not have both a supervisory responsibility and a responsibility to hold to account the exercise of executive power, because we do.

**Senator Boudreau:** I do not think I disagree with the honourable senator on that at all. The Senate and the House of Commons have a supervisory role, and there are executive powers, as referred to by the honourable senator in the main body of his speech. Where we disagree is that this bill will make any difference at all to the role of the Senate in exercising that supervisory power. At this point, I fail to see what difference it makes. How will the role of the Senate be different, in terms of all the powers and the important role it now enjoys? How will that role be changed by this legislation?

**Senator Kinsella:** It will be changed fundamentally, and in a historically damaging fashion. The Senate of Canada will have become relativized and made second class in its view on the determination of what would constitute a clear question in a referendum and what would constitute a clear majority. By excluding the Senate of Canada from a determinative role where the House of Commons would have a determinative role would cause fundamental damage to the Senate of Canada, in its usages and its practices. It would be decisively fatal to the tradition of parliamentary consent.

**Hon. B. Alasdair Graham:** Honourable senators, I have one question, for the purpose of clarity. The Honourable Senator Kinsella made reference to the principle of 50, plus one. Is it the honourable senator's opinion that one vote should be sufficient to break up this country?

**Senator Kinsella:** Absolutely not. I tend to agree with my colleague Senator Lynch-Staunton, who spoke to this particular issue. I make the point that, with reference to the facade of security that this bill is presenting, we must take seriously what the Supreme Court has told us. We can go through all these steps, but unconstitutional and illegal unilateral declaration of independence is still a possibility. The court is warning us. Therefore, when you examine each of these steps and examine the step concerning what will constitute a clear majority, there will be very few countries around the world that will be looking for the high standard of 66 per cent when they are asked to give international recognition to a secessionist province. Few countries around the world would also refuse to give international recognition to a secessionist province if it was 50, plus one. Indeed, as I mentioned in parenthesis, there are many countries with which we have good relations — governments that operate without anything close to a 50 per cent, plus one support.

**Senator Graham:** I am glad that Senator Kinsella clarified that point. In the presentation notes, the honourable senator made reference and linked 50, plus one to the dictator who had 12 per cent but also had an army. I took that reference to mean that 50, plus one would be sufficient. That is the impression I got from your remarks to break up the country.

**Senator Kinsella:** I thank the honourable senator for that input. The serious issue involves the "political actors" referred to

by the court, namely, the international political actors. At the end of the day, they will determine whether or not we will have Canada broken up into a series of countries. The court has told us that. This bill is ill-advised because it lays out these steps, which at each point are destined to failure. Thus, at each point, a gift or golden opportunity is handed on a silver platter to the secessionist movement. This is a very foolish approach to dealing with the matter. Certain principles were identified in the advisory opinion. We should have left well enough alone. This only makes matters worse.

• (1740)

**Hon. Joan Fraser:** Honourable senators, I should like to return to the question of indivisibility. This absolutely crucial question goes to the very heart of what we are as a country. I am afraid that I still do not quite understand Senator Kinsella's position. He began by saying, and I am sure we would all agree, that there are only two ways to hold a country together — by force or by persuasion. He went to say, and again I expect we would all agree, that we would not support the use of force. Then he went on to cite, with apparent approval, a number of regimes where it is not permissible to secede. He cited the United States, which had recourse to force for four years to prevent secession. He cited Mexico, which has had recourse to force. He could have cited other federations — Russia, India and perhaps some others.

Senator Kinsella did not explain how one could keep a country together or how one could enforce his principle of indivisibility if persuasion has failed and if, despite the best efforts of us all, the people of a given province by an indisputably clear majority in response to an indisputably clear question say, "We have listened to your persuasion and we are sorry, but we still want to go." It seems to me that the logical conclusion to which he leads us is force. Could he clarify that position, please?

**Senator Kinsella:** I thank the honourable senator for that question. First and foremost, I reiterate my view that Canada is indivisible. Second, when one examines the theory and the argumentation in the advisory opinion of the Supreme Court, it is based upon an analysis of constitutionalism, the rule of law, democracy and federalism.

These exact same values are shared by the other two federations with which we share the North American continent — the United States and Mexico. In both those federations, there is no admission in their constitutional law of the breakup of their countries. That is their starting point.

My argument is that we ought to have the same foundation. The indivisibility of Canada should be our starting point. If that is our starting point, then the chances are that our self-fulfilling prophecy will be the ongoing unity of this country with all the ups and downs that we have gone through for the past 133 years.

If, however, our starting point is the divisibility of Canada and we set out a process and erect a stage, then that act will be played out. If our response to the secessionist movement is always one of defence, then at the end of the day, the secessionist movement will succeed.



I suggest, honourable senators, that the solution lays in the generation of new ideas, recognizing that there is great diversity among the peoples of Canada. I do not want to use the jargon of Plan A and Plan B, but others find that jargon attractive. Clearly, as the leader of the Liberal Party of Quebec so metaphorically describes it, we are going into a big black hole.

**Hon. Gérard-A. Beaudoin:** By way of supplementary to the question of Senator Boudreau, if a simple statute can give a power to one house and not to the other, is it not the case that if this is done five or six times in a certain period of time, the powers of the other house are reduced considerably? I refer to the Senate, our house. This would be done without any amendment to the Constitution.

**Senator Kinsella:** I could not agree more. I am hopeful that Senator Beaudoin will develop that particular theme clearly. We have the written acts. We have the Constitution Act of 1867, the Constitution Act of 1982, and we have customs and usages, just as within Parliament we have the Parliament of Canada Act and the rules of this chamber. We also have customs and usages that would develop very rapidly for a whole variety of reasons, including the current selection process of members of this house. We will be the ones who will be held accountable for the relativizing in our time, during our watch, of the Senate of Canada vis-à-vis the House of Commons.

Honourable senators, I cannot see how we could do anything but work together to at least solve that problem. It is solvable.

**Hon. Jeremiah S. Grafstein:** Honourable senators, I listened with great care to Senator Kinsella. I congratulate him on his ability to set out these issues from his perspective. He has two constitutional objections, as I hear them. One is the diminution of the power of the Senate, which has been echoed by Senator Beaudoin, based on the Constitution and the conventions of the Constitution.

I will not comment on that issue at this time, but I am interested in the senator's first proposition, which is the *ultra vires* nature of the legislation. He bases it, if I am correct, on his view that the advisory judgment of the Supreme Court may have some fault lines.

The question of *ultra vires* as it applies to the bill, as opposed to the issue of the Senate — I want to separate the two — is this: Given that the Supreme Court has given an advisory, in all its splendour or flaws, and given the fact that the government, for good or bad, has decided to exercise its discretion in the form of this piece of legislation, which we have been told carefully mirrors the advisory, how does Senator Kinsella still say that this bill might be *ultra vires* or unconstitutional?

**Senator Kinsella:** Honourable senators, unfortunately, in the advisory opinion in the Quebec Reference case, the court does not attend to the issue of where Parliament might or might not

[ Senator Kinsella ]

have the authority to bring in this kind of legislation. Indeed, nowhere in the decision is the court recommending that this kind of legislation would even be brought in. Indeed, the former chief justice expressed surprise that a statutory provision was brought in along this line.

If that matter were to be pursued, we would need to ask the court its opinion on whether there is a constitutional basis or where the authority exists for Parliament to pass a law that has the effect of breaking up Canada. The court does not tell us that.

• (1750)

I argue that this matter is *ultra vires* on the basis that the tradition of our parliamentary system is one where the consent of the Houses of Parliament is given to the Crown on measures that are in the best interests of the people of Canada. This bill could never be in the best interests of Canada because, at the end of the day, it is leading to the breakup of Canada.

**Senator Grafstein:** Again this gives me some concern. I want to keep separate the question of Senate powers. I do not think there is anyone in this chamber who was sworn at this table who would deny the premise that no one would like to see, in any way, shape, or form, the breakup of Canada. I cannot believe that anyone who has ever come to this chamber would have that as an objective. I think we all have the shared value, based on our constitutional oath, to uphold the Constitution and uphold the unity of the country.

However, now we are faced with an advisory, and the advisory has raised questions. If the executive chooses, as the Leader of the Government has suggested, to exercise its discretion in a particular way, and perhaps limit its discretion in a particular way, how is that constitutionally objectionable, laying aside the role of the Senate?

**Senator Kinsella:** That is precisely the point. The executive did not have to seek the approval of the House of Commons to go through this process. The executive does not need this legislation to do whatever it wants to do in this area. However, each House of Parliament will have the duty and responsibility to hold accountable the government of the day for whatever it does in this field. Here, the House of Commons is being co-opted into this process. How will the House of Commons hold accountable the executive in a process into which they are now co-opted?

**Hon. John. G. Bryden:** Will Senator Kinsella take yet one more question?

**Senator Kinsella:** Yes.

**Senator Bryden:** I listened to Senator Kinsella's presentation and paid particular heed to the part about the country being indivisible and the part where he said that we cannot use force to keep Canada together. We do not have the power to do it by any other means, except, I guess, persuasion.

As I listened, I was reminded of someone who for many years was a professor at St. Thomas University, and perhaps still is. He was a follower of Aristotle. While listening to the remarks, it occurred to me that the logic, at least in Aristotelian terms, gets a little convoluted. We are saying that the country is indivisible; that it cannot be broken up. We have no jurisdiction. There is nothing in our laws to deal with that. The United States cannot be broken up, but they used force to do so. We would not do that. Mexico cannot be broken up, but they used force to do so. Canada would not do that.

Will the problem be like that of the man who had a psychological fixation that he was dead? An Aristotelian logician said, "I can force him to recognize that he is not dead. I can force him to recognize that he is alive. Just give me a few minutes with him." It was agreed and he went to see the man who said that he was dead. The logician asked, "Do you believe that you are dead, that you are not alive?" The man replied, "Yes, I do." The logician said, "Let me ask you a question. Do dead men bleed?" The response was, "No, sir, dead men do not bleed." The logician said, "Give me your hand." He cut the man's hand and squeezed it, then asked, "What do you think of that?" The fellow said, "My God, dead men do bleed!"

My concern, Senator Kinsella, is that, following your logic, you will wake up someday and find more than one country that used to be Canada, and you will say, "My God, Canada is divisible!"

**Senator Kinsella:** I think that Senator Bryden's argumentation is not so much Aristotelian as sophism.

He did mention the Angelic Doctor, Saint Thomas Aquinas. Aquinas defined law as the ordinance of right reason. I argue that there is no right reason in this legislative proposal because, if we adopt this bill and make it part of the Statutes of Canada, and all the steps are followed for the legal secession of a part of the country, it might all be very nice legally, although I do not believe that could ever happen. However, even with that, Canada will be gone.

I will use a different metaphor to that of Senator Bryden's. I will use as my metaphor the beautiful Victorian home that Senator Robichaud used to have on Waterloo Road in Fredericton. The house would last for hundreds of years, except that its wiring was the old cloth wiring from the turn of the century and the place was a fire trap. Does Senator Robichaud hire an electrical contractor to rewire the place, or does he buy fire insurance? I suggest, honourable senators, that this measure of the government is "buying fire insurance."

On motion of Senator Hays, debate adjourned.

## BUSINESS OF THE SENATE

**Hon. Dan Hays (Deputy Leader of the Government):** Honourable senators, I should like the orders of Government Business to be called in the following order: Item No. 6, Bill S-17, which I think Senator Angus will address; Item No. 5, Bill S-18, which I believe Senator Meighen will address; Item No. 7, Bill C-13, which I believe Senators Carstairs and

Keon will address; Item No. 3, Bill C-10, to which Senator Moore will speak; and then Item No. 4, Bill S-19.

Before we proceed, however, honourable senators, I should like to ask leave that we not see the clock for one hour. If we are done before that, all the better, but assuming leave is granted, I have one other matter which I should like to raise.

**The Hon. the Speaker:** Is there leave that I not see the clock for one hour?

**Hon. Senators:** Agreed.

**The Hon. the Speaker:** Therefore, at seven o'clock I will leave the Chair, unless there is further agreement.

• (1800)

## FISHERIES

COMMITTEE AUTHORIZED TO MEET  
DURING SITTING OF THE SENATE

**Hon. Dan Hays:** Honourable senators, with leave of the Senate and notwithstanding rule 58(1)(a), I move:

That the Standing Senate Committee on Fisheries have power to sit at 6 p.m. today even though the Senate may then be sitting, and that rule 95(4) be suspended in relation thereto.

**The Hon. the Speaker:** Is leave granted, honourable senators?

**Hon. Senators:** Agreed.

Motion agreed to.

## MARINE LIABILITY BILL

SECOND READING

On the Order:

Resuming debate on the motion of the Honourable Senator Furey, seconded by the Honourable Senator Fraser, for the second reading of Bill S-17, respecting marine liability, and to validate certain by-laws and regulations.

**Hon. W. David Angus:** Honourable senators, I am somewhat hesitant, even humbled, to introduce my rather technical subject after listening to the learned debate this afternoon on Bill C-20. The quality of the debate has been unusually high and fascinating, given the nature of the subject matter — the very survival of our great nation. I hope you will bear with me. This subject pales beside the other.

I rise to make a few comments on Bill S-17, which was introduced by the Honourable Senator Boudreau and received first reading in this chamber on March 2, 2000. The bill was addressed and proposed for second reading on Tuesday, March 21 by Senator Furey.



Let me say at the outset, honourable senators, one, that I firmly support this legislation and advocate its expeditious passage through the parliamentary process, including appropriate study by the Standing Senate Committee on Transport and Communications, and by the transport committee in the other place.

Two, I note with great pleasure that the government has once again taken steps to move forward with this now long-overdue legislation, and all the more so, honourable senators, because it has chosen to initiate the process here in the Senate. It is an initiative of which I hope we will see more.

Three, I deplore the government's repeated ham-handed parliamentary mismanagement of this particular legislation, both in its present form and in its earlier manifestations, leading to unfortunate and substantial delays, so that Canada's otherwise excellent image in the domestic and international maritime law and insurance community has been tarnished and called into question, both at home and abroad.

As a number of honourable senators I believe are aware, I have devoted the bulk of my 38-year career as a lawyer to the practice of maritime law in all its aspects. I served from 1988 through 1991 as president of the Canadian Maritime Law Association, and I am currently, and have been since 1994, a member of the executive council of the Comité Maritime International, the CMI, in Antwerp, Belgium, which is the private-sector international marine law association that brings together as constituent members some 50 national maritime law associations from around the world.

I have for many years been interested in and, indeed, committed to the development of uniform Canadian and international maritime law, and the harmonization globally of its principle rules and regulations. Thus, I am very pleased to have this opportunity to associate myself with and support the principles and objectives of Bill S-17.

I say this not only to indicate to honourable senators my special interest in this legislation, but also to demonstrate a modicum of first-hand knowledge of the matters and issues in the bill, especially of the on-going importance of both national and international uniformity of laws, such as those that establish regimes of marine liability, and rules and standards relating to the safety of ships and life at sea. Canada has for decades participated actively and with distinction in international organizations dedicated to promoting uniformity and harmonization of maritime law, including the International Maritime Organization, the IMO, and the CMI.

This bill is a combination of substantive new law in four of its elements, as seen in Parts 1, 2, 4 and 5 of the bill. For the rest, it consists largely of legislative modernization, rearrangement, and related housekeeping measures. More important, though, the bill, as it purports to create a new marine liability statute for Canada that can be added to and/or subtracted from as may be appropriate over the years going forward, falls into the category of framework legislation; part of an overall restructuring,

[ Senator Angus ]

modernization and simplification of the main statutory elements of Canadian maritime law. In this sense, honourable senators, I believe Bill S-17 to be a positive and constructive initiative.

The substantive aspects of the bill concern, one, the long overdue adoption into Canadian law, in Part 4 of the bill, of the Athens Convention, relating to the carriage of passengers and their luggage at sea, which sets forth an internationally accepted comprehensive regime of ship owners' liability for loss of life or personal injury to passengers travelling onboard ships. Existing Canadian domestic legislation deals only with global limitation of liability for maritime claims, including passengers' claims, but it fails to establish a basis upon which liability for passengers may be established, thus leaving shipboard passengers to rely on Canada's various and, in some cases, uncertain provincial laws of negligence to solve their claims and obtain compensation.

The Athens Convention was adopted by the IMO, with Canada's full approval, in December 1974 as a uniform convention, which was amended in 1990 by a protocol updating its limits of liability. It is now high time that Canada implement this convention by incorporating it into our domestic law.

The substantive aspects also concern, two, the adoption under federal law, which includes that certain body of law now known as "Canadian maritime law", in Part 2 of the bill a new regime for apportioning liability for marine claims, thus clarifying what is presently a difficult and confusing area of Canadian law. If enacted, Bill S-17 will provide a uniform regime for the apportionment of liability applicable to all civil torts governed by Canadian maritime law. This regime follows the 1997 and 1999 decisions of the Supreme Court of Canada in *Bow Valley Husky (Bermuda) Ltd. v. St. John Shipbuilding Ltd.* and in *Ordon v. Grail*, which held *inter alia* that Canadian courts may apportion damages based on the degree of fault determined by the court as between claimant and defendant, or amongst defendants in the case of joint liability.

Three, Part 1 of the bill also contains substantive new law in that it purports to update Canadian maritime law so as to reflect recent developments in provincial fatal accidents legislation. In this regard, Bill S-17 confirms that claims for wrongful death or injury in the marine domain may be made against persons as well as against ships *in rem*, thus enabling the relatives of deceased and injured persons to claim for loss of care, guidance and companionship; and, finally, to modernize the language of the legislative provisions that govern such claims. Otherwise, Parliament generally re-enacts those provisions concerning fatal accidents that presently appear in Part 14 of the Canada Shipping Act. This, honourable senators, is also an integral part of the aforementioned overall project to simplify and modernize Canada's maritime laws.

I understand from officials at Transport Canada that another very important marine bill, a modernized and revitalized Canada Shipping Act, will shortly be introduced in Parliament as companion to Bill S-17. I hope this will take place once again here in the Senate.



Four, Part 5 of Bill S-17 basically incorporates word for word into the new Marine Liability Act Canada's Hague Rules Statute, the Carriage of Goods by Water Act, which deals with shipowners and operators' liability for cargo damage. However, one substantive and welcome change has been introduced in Bill S-17, namely, a new provision that broadens the jurisdiction of Canadian courts to deal with cargo claims, especially those of Canadian exporters and importers and their insurers. This should improve recovery costs for Canadian claimants, while at the same time providing badly needed new business for the down-and-out Canadian maritime lawyers.

• (1810)

Honourable senators, as I have indicated, Part 4 of Bill S-17 establishes the basis and amounts of liability of shipowners to their passengers for personal injury and loss of life.

The new regime will apply to both domestic and international carriage of passengers by ship and, accordingly, will finally bring Canadian law in this field into line with that of most of our trading partners.

In most developed maritime nations, the laissez-faire system of liability in the marine transportation sector has long been replaced by some form of statutory liability. The Athens Convention is now the leading international model in the area of passenger claims.

In Canada, contracting out of liability by shipowners and operators, especially in marine passenger contracts issued by foreign carriers serving Canada, has been more the rule than the exception. Bill S-17, if enacted, will obviate this practice. Such exculpatory clauses are no longer recognized in France, the United Kingdom, the United States and elsewhere. They are also generally absent from contracts of carriage in other transportation systems here in Canada, or are expressly prohibited, as in the air mode, pursuant to the Carriage By Air Act.

Canada's marine industry enjoys a relatively good safety record. However, accidents can, and often do, happen. Thus, it appears to be a good thing that the government is finally proceeding to ensure that Canadian law is up-to-date and in line with that of our sister nations and our trading partners.

What is troubling, however, honourable senators, is that we are only getting around to doing this now. A major passenger ship disaster in Canadian waters today would doubtless generate a public outcry for fair and adequate compensation to victims precluded from being indemnified for their loss. Frankly, the risk of such a casualty has been increasing through the use of large car ferries with substantial passenger capacity on both the East and West Coasts, as well as the growing popularity of giant cruise liners which now regularly carry thousands of passengers inside and adjacent to Canadian coastal waters. I submit that good public policy demands the resolution of this problem now and without further delay.

Why is it, then, that Bill C-59, entitled Carriage of Passengers by Water Act, introduced in the Second Session of the Thirty-Fifth Parliament, containing the exact same provisions as those set out in Part 4 of Bill S-17, was permitted by this

government to die on the Order Paper in April 1997? This was indeed unfortunate, not to say risky and imprudent, if not impudent. Let us all, in both Houses, take heed for past government mismanagement and give this bill the serious and expeditious treatment it merits.

To save time, honourable senators, I make reference to but will not repeat *in extenso* here today the comments I made in this chamber on October 21, 1997, respecting the inexcusable delays which preceded the enactment of Bill S-4, another key statute dealing with marine liability, specifically, shipowners' liability for maritime claims in general, and for marine pollution in particular, and the right to limit such liability and to what extent. One cannot help but wonder why marine policy and legislation in Canada has heretofore seemingly had such a low priority on the government's agenda. After all, Canada is a major maritime nation, with one of the world's most extensive coastlines.

The Athens Convention is not the only international maritime convention which Canada has approved at the diplomatic level and then been subjected to delayed implementation into our domestic law. Another striking example is the HNS Convention dealing with the carriage of hazardous and noxious substances and a liability regime which is related thereto. These conventions in most cases deal with the economic and legal consequences of maritime accidents or casualties and are designed to harmonize the international law and practices of different nations so as to achieve uniformity of law and procedure and a level playing field in the marine arena, which is international by its very nature. Once approved by our government at the diplomatic level, they should, as a matter of comity, at the very least, as well as for compelling practical reasons, be implemented with all due dispatch.

Many dedicated private Canadian citizens and highly skilled bureaucrats have worked long and hard to achieve international consensus and to make these conventions good and valid realities. Surely, it is now our duty as legislators to complete their fine work. Let us not let them down again, either now or in the future.

In this same vein, I would be remiss if I did not point out that those provisions of Part 1 of Bill S-17 which deal with fatal accidents were also previously introduced in Parliament as Bill C-73, to amend the Canada Shipping Act and other acts in consequence, which was also allowed by the Government, for what appeared to many as self-serving partisan and political reasons, to die on the Order Paper in April 1997 — the Government's priority apparently being to call an uncommonly early general election on June 2, 1997, rather than diligently completing its important legislative program first.

Honourable senators, as far as I can determine, the new substantive maritime laws contained in Bill S-17 are noncontroversial and unopposed by any group or interest which had been identified to date. By contrast, the legislation is eagerly awaited by all elements of Canada's marine industry, including shipowning, shipping, cargo, passenger, insurance, and maritime law interests alike. Indeed, full and complete discussion papers have been circulated by government officials to all interested parties, and the main elements of what is now Bill S-17 have already received wide stakeholder approval and interest.

Honourable senators, the same may be said of the creation through Bill S-17 of a framework for a new Canadian marine liability statute as a companion statute to the forthcoming modernized Canada Shipping Act.

The current legislative system, whereby liability regimes are set forth in various pieces of legislation, is not practical, effective, or satisfactory, and certainly is not user-friendly.

A single statute devoted exclusively to issues of marine liability, present and future, will help all members of the marine community to better understand the responsibilities and the rights of those who are or will be affected by the laws in question. Dare I say it, honourable senators, such consolidation may also significantly simplify, and perhaps even expedite, the work of many of Canada's maritime lawyers. Can this be a bad thing?

I have just one caveat to bring to your attention, honourable senators. That is the indication in the department's briefing papers that this bill contains so-called housekeeping provisions designed retroactively to validate certain bylaws made under the Canada Ports Corporation Act and certain regulations made under the Pilotage Act. Honourable senators, not only do we, as a general rule, look askance at retroactive legislation, but one must also query why invalid bylaws and regulations were enacted in the first place. Hopefully, these issues will be raised and satisfactorily answered at the committee stage.

Honourable senators, subject to this one caveat, I have no hesitation at all in recommending speedy passage of this legislation through Parliament. It is my sincere hope that it will not founder on such rocky shoals as those which terminated the voyages of Bill C-59 and Bill C-73 in April of 1997.

**Hon. George Furey:** Honourable senators —

**The Hon. the Speaker:** Honourable senators, I wish to inform the Senate that if the Honourable Senator Furey speaks now, his speech will have the effect of closing debate on the motion for second reading of this bill.

**Senator Furey:** Absent a few rather scathing swats which the honourable senator took at timeliness, I endorse his comments and thank him for his agreement in treating this bill as expeditiously as possible. Indeed, the rather technical questions raised at the end of Senator Angus' comments with respect to retroactivity will be addressed at committee.

Therefore, honourable senators, I commend this bill to you.

• (1820)

**The Hon. the Speaker:** Is it your pleasure, honourable senators, to adopt the motion?

**Hon. Senators:** Agreed.

Motion agreed to and bill read second time.  
[ Senator Angus ]

## REFERRED TO COMMITTEE

**The Hon. the Speaker:** Honourable senators, when shall this bill be read the third time?

On motion of Senator Furey, bill referred to the Standing Senate Committee on Transport and Communications.

## NATIONAL DEFENCE ACT

### BILL TO AMEND—SECOND READING

On the Order:

Resuming debate on the motion of the Honourable Senator Pearson, seconded by the Honourable Senator Finestone, P.C., for the second reading of Bill S-18, to amend the National Defence Act (non-deployment of persons under the age of eighteen years to theatres of hostilities).

**Hon. Michael A. Meighen:** Honourable senators, I rise to speak briefly on the second reading of Bill S-18, to amend the National Defence Act.

I am sorry that our colleague Senator Pearson is not here at the moment. However, I was not here when she introduced this legislation. I suppose, then, what is fair for the goose is fair for the gander.

I am pleased to be speaking on a bill the government has seen fit to introduce in the Senate. Recognizing the usefulness of proceeding in this fashion, I encourage the government in its high counsel to do more of this.

I have read with great interest the remarks of Senator Pearson. I congratulate her, *in absentia*, on the succinctness and clarity of her exposé. I will try to do likewise.

When Senator Pearson introduced the bill, she said that she thought honourable senators would be surprised that a senator such as herself would be introducing an amendment to the National Defence Act. Frankly, I do not find that surprising at all. However, she may be surprised to know that I agree with just about everything she said. I venture to say that all honourable senators on this side of the chamber feel the same way.

Senator Pearson pointed out in her introduction that the proposed amendment before the Senate will put into law that which is the current practice and policy of the Department of National Defence and will ensure that Canada does not send persons under the age of 18 years into a theatre of hostilities.

This amendment will also put Canada in compliance with the recently negotiated Optional Protocol to the United Nations Convention on the Rights of the Child. The Convention on the Rights of the Child was adopted by the United Nations in 1989 and has since been ratified by 191 countries.



The government of the Right Honourable Brian Mulroney was very closely involved in negotiation and development of the convention. It was signed by Prime Minister Mulroney in 1990 and ratified by Parliament in 1991. I cannot pass up the opportunity to note that in this area, as in so many others, the current government is carrying on with important initiatives introduced by its predecessors.

As stated by Senator Pearson, the optional protocol will establish new international standards that will require its signatories to set 18 years as the minimum age for compulsory recruitment; to take all feasible measures to ensure that members of their armed forces who are under the age of 18 years do not take direct part in hostilities; and to raise the minimum age for volunteer recruitment to at least 16 years of age and to deposit a binding declaration to this effect upon ratifying the optional protocol.

Under the terms of the optional protocol, signatories that permit voluntary recruitment of persons under the age of 18 years are required to maintain safeguards to ensure that recruitment is genuinely voluntary and that it is done with parental consent and reliable proof of age, something which I cannot help but mention seems to have been missing in 1939 and 1940 when many citizens, perhaps citizens familiar to members of this house, knowingly lied about their age in order to take part in combatting the spread of fascism. One cannot be critical of their motive in that case. Finally, recruited candidates must be fully informed of the duties involved in military service.

[Translation]

Honourable senators doubtless know that the Canadian Forces are currently recruiting individuals aged 16 and 17. However, sign-up is strictly on a volunteer basis and parental consent and proof of age are required. In addition, all candidates are informed of their duties as military personnel.

It is interesting to note that, like Canada, the U.S. is recruiting 16- and 17-year-olds. However, unlike Canada, the U.S. is deploying these young soldiers in conflict zones. In recent years, these 17-year-old soldiers have been deployed by the United States in the Gulf War, in Somalia and in Bosnia. I am pleased to note that the U.S. recently agreed to put an end to the deployment of young soldiers under the age of 18 in combat zones.

The problem of the use of children in an active military role is not insignificant. As I speak, hundreds of thousands of child soldiers are being used in armed conflicts around the world. Human Rights Watch, an American human rights organization, reports that child soldiers are taking part or have taken part in 33 current or recent conflicts in almost all regions of the world.

[English]

As I indicated earlier, honourable senators, our practice in Canada is already fully in line with this optional protocol.

However, I commend the government for acting to bring our legislation into line with our practice.

We urge the government to work aggressively at the United Nations to ensure that this protocol is adopted by the General Assembly at an early date and that it is subsequently signed and ratified by the UN member states.

Honourable senators, there is much work yet to be done to bring the optional protocol into force. However, Bill S-18 is an important and helpful first step. I urge all senators to support it.

**The Hon. the Speaker *pro tempore*:** Honourable senators, is it your pleasure to adopt the motion?

**Hon. Senators:** Agreed.

Motion agreed and bill read second time.

REFERRED TO COMMITTEE

**The Hon. the Speaker *pro tempore*:** Honourable senators, when shall this bill be read the third time?

On motion of Senator Hays, bill referred to the Standing Senate Committee on Foreign Affairs.

## CANADIAN INSTITUTES OF HEALTH RESEARCH BILL

### SECOND READING

**Hon. Sharon Carstairs** moved the second reading of Bill C-13, to establish the Canadian Institutes of Health Research, to repeal the Medical Research Council Act and to make consequential amendments to other Acts.

She said: Honourable senators, I have the honour to rise in support of Bill C-13, to establish the Canadian Institutes of Health Research.

Canada's health research community already has a reputation for excellence throughout the world. Major health discoveries have been made by Canadians, such as Dr. Henry Friesen, the present Chair of the Medical Research Council, who discovered the human hormone prolactin that affects fertility among women.

• (1830)

Canadians also lead in researching innovative approaches to help policy and administration. For example, Winnipeggers like Drs. Les and Noralou Roos and Dr. Charlyn Black have developed databases that provide policymakers with an understanding of the health needs of populations and the role of health care as a determinant of health.

Each year, Canadian researchers win more than half the grants made available to foreign researchers by the United States National Institutes of Health.



[Translation]

In order to continue and sustain health research in Canada, we must recognize that the nature of modern health research is changing, and we need a health research system capable of understanding these complex new challenges.

[English]

We need to be able to address emerging and re-emerging threats to our health. We must be able to take on challenges as diverse as the mysteries of mental health, as complicated as the development of antibiotics to combat new strains of bacteria, and as complex as determining the health impacts of family violence.

In addition to studying illness and disease, our health research system needs to support the study of the social and environmental determinants of health. We need to integrate our findings with other research on the many factors that affect the health of communities and populations.

We need, honourable senators, to position ourselves to take full advantage of the revolution in genetic technology that is opening up new avenues for treating disease. We must be able to make use of innovative methodologies and health services research that make it possible to better evaluate how well we are providing services to Canadians through our health care system.

These are challenges that will define how we promote, protect and improve the health of Canadians over the next decades.

Honourable senators, Bill C-13 would create the Canadian Institutes of Health Research to respond to these challenges. It takes a fundamentally different approach to health research through the creation of institutes that will provide a strategic direction to research in thematic areas such as chronic diseases or aging.

Institutes will give the CIHR new tools to support health research that are not available in the current granting-council structure — the Medical Research Council. Through institutes, the CIHR will provide research in a specific scientific field to promote excellence and achievement. Institutes will provide the opportunity to link and integrate research in different disciplines as part of a coordinated focus on a specific health issue. They will give the CIHR the ability to identify national health needs and emerging critical health issues, and to develop strategies to link these priorities with research activities.

Institutes will give the public and other key stakeholders, through institute advisory boards, the opportunity to have direct input into research priority setting, and they will facilitate partnerships on strategic initiatives among the public sector, the health charities and the private sector.

Honourable senators, as outlined in the bill:

The objective of the CIHR is to excel, according to internationally accepted standards of scientific excellence,

[ Senator Carstairs ]

in the creation of new knowledge and its translation into improved health for Canadians, more effective health services and products and a strengthened Canadian health care system.

[Translation]

This objective contains a key phrase — nationally accepted standards of scientific excellence. With CIHR, as with the present system, these standards will be achieved through a process of peer review. All major extra-mural health research organizations rely on peer review.

CIHR will build on the excellent reputation already enjoyed by Canada's existing peer review system. The provisional governing council of CIHR is looking at the possibility of extending the peer review process in order to allow the participation of non-specialist members on peer review committees. The governing council will also have to promote innovation and risk-taking as part of the peer review process.

[English]

In this way, the CIHR will continue to enhance Canada's reputation for excellence in health research.

Honourable senators, excellence in health research is all very well, but if the results of this research are not applied, then the question of excellence becomes solely academic. Research findings can be translated into better practice of health care helping to prevent, treat and cure diseases. They can be translated into a more efficient health care system that delivers services that will benefit all Canadians.

Researchers in Canada have already succeeded in creating a thriving health research environment. Michael Smith won the Nobel Prize for his contribution to our genetic understanding of diseases. Leigh Field has discovered two genes that produce susceptibility to juvenile diabetes, the most severe form of the disease. Salim Yusuf headed up a study that found that an anti-hypertensive drug called ramipril substantially improve survival after heart attack and lowered the risk of subsequent heart attacks. These findings could prevent 1 million premature deaths, heart attacks and strokes each year.

The investment in the CIHR is an investment in new knowledge about our health and our health care system, which will benefit all Canadians. While this investment supports research in the academic community, the products of this investment will benefit us all.

In the cycle of innovation that characterizes health research, research results can also lead to new research efforts. For example, the initial endowment of the research arm of the Hospital for Sick Children in Toronto is a direct result of the discovery of Pabulum, several decades ago, that has helped children in Canada and throughout the world grow to be strong and healthy.

A crucial challenge for establishing the CIHR has been to have programs ready for the first year of its existence. The programming is now in place, administered by the existing granting councils until such time as the CIHR is officially established. Applications are already coming in and some awards have already been made. The response to these transition programs has been very encouraging, signalling that there is great potential for capacity building and willingness among researchers to work in collaborative research projects with the CIHR. The success of these programs demonstrates the degree to which the entire research community is excited about the opportunities of the CIHR and ready to take on the challenge of conducting health research in a new, more integrated and more targeted way.

Honourable senators, one of the most important decisions the Minister of Health will have to make in the weeks to come is who will direct this new organization. The new president and governing council must be individuals of the highest calibre, capable of commanding the respect of all who are involved with the CIHR. Nominations for these positions were actively sought, not only from stakeholders but also from the general public, because the CIHR belongs to all Canadians.

[Translation]

When the president and members of the governing council are appointed, one of their first priorities will be to identify the first CIHR institutes. This is no small task. Institutes must meet the health care needs of Canadians. They must have broad scope and the ability to excel in research and, finally, take various approaches to health research.

[English]

The new governing council will not be starting from scratch. They will benefit from the best thinking of the health research community and input from the interim governing council, which has focused on how the interests of the health research community as a whole will best be served.

Having said that, honourable senators, I believe it is incumbent upon each and every one of us, during our deliberations on this bill, to give our best advice as to the future directions of these new research institutes. In my view, there are four areas of health research that have been seriously neglected in the past in Canada.

Honourable senators, one-in-five Canadians will suffer from mental illness in their lifetime.

• (1840)

It may be a relatively light depression, easily treated, if treatment is indeed sought; or it can be bipolar disease or schizophrenia, both of which can have lifelong effects. We know of the devastating impact that these diseases have on individuals and their families, but there are also enormous social costs. For example, many of the homeless in our society suffer from mental illness. Yet we have done little health research in this country in the areas of causes, impacts and effects of mental illness. The

new CIHR offers us an excellent opportunity, which should not be missed.

A second issue of concern in the health area is that of our aging population. Honourable senators, the demographics in our country are changing. According to estimates by Statistics Canada, in 1998 there were over 400,000 people over the age of 85. In 2041, it is estimated that there will be over 1.6 million over the age of 85 in Canada. We know that many will suffer from Alzheimer's, dementia or other degenerative diseases. Our aging population will put pressure on our health care system for palliative care beds, acute care beds, personal care homes and home care services. Research is needed not only to seek a cure for these diseases but also to help us plan for these enormous changes.

No one in this chamber, I know, would want us to neglect the very serious issue of aboriginal health. I will give you just one statistic alone, honourable senators: Three times the number of aboriginal men and five times the number of aboriginal women suffer from diabetes. It is a serious form of diabetes that strikes the people in aboriginal communities, to some degree because of the quality of their housing and their lack of medical care. Many of them suffer from renal failure. Many of them require the removal of limbs. This is an intolerable situation and one that we must address.

Honourable senators, as a woman, I would not be fair to my gender if I did not mention the concern that many women have about our health. Cardiovascular disease, for example, is the number one killer of women in Canada; yet women are tested and treated far less frequently for heart conditions than are men — unless, of course, we are lucky enough to have access to Dr. Keon.

We also know that women who are infected by HIV are infected in different ways. Women are the principal paid and unpaid caregivers in our society but the health consequences of this are poorly understood. There is no doubt in my mind that my mother died seven months after my father because she had spent the ten previous years looking after my father.

We need to examine whether an institute on women's health is the way to go. Is that the correct route? Perhaps another option is to have clear gender analysis in every single one of the institutes, gender analysis that will reflect the conditions of men and women.

We hear a great deal in this chamber, and most eloquently recently by Senator St. Germain, about breast cancer. We do not hear nearly as much about prostate cancer. Yet, if you polled the male senators and the spouses of female senators, you would find that prostate cancer is, in fact, a more frequent occurrence than breast cancer, because 1 in 8 men are affected by prostate cancer and only 1 in 9 women suffer from breast cancer. However, very little money is spent on prostate research in this country. I would suggest that that kind of gender analysis might be extremely useful, not just for one health institute but for all health institutes, to ensure that, when we are looking at disease in all of its dynamics, the gender of the patients involved is also a significant department.



Honourable senators, even now in the planning phases of CIHR, historic new relationships and partnerships are being established. Meetings are being held among health research groups and organizations across the country. The ties are being created that will connect researchers from different disciplines and different areas of the country, that will bring together research funders and research users in CIHR.

The result, honourable senators, I have no doubt, will be a better health care system and better health for all Canadians. Honourable senators, I urge you to support Bill C-13.

**Hon. Senators:** Hear, hear!

**Hon. Wilbert J. Keon:** Honourable senators, it is with a great sense of excitement and enthusiasm that I stand before you today to speak to Bill C-13. The vision, values and principles upon which this bill has been drafted set the stage for the development of a renewed national research structure capable of being responsive to the changing realities and needs of the Canadian population.

The establishment of the Canadian Institutes of Health Research is an event of immense significance to the nation, an event that carries with it enormous potential and opportunity to build on this country's strong foundation of excellence in health research.

The creation of the CIHR will fundamentally and structurally transform the way research is conducted across this country. Much of CIHR's work will be built on a broad range of strong and cooperative partnerships. These partnerships will be developed, in large part, through the formation of a number of institutes. These institutes will represent nodes of scientific leadership in Canada and will be the mechanisms for linking national health charities, provincial health charities, other voluntary organizations, the private sector, provincial health services agencies and those who deliver health care.

In effect, the institutes will move the support for health research beyond the confines of a traditional granting agency through a system of partnerships and alliances that will open up a range of new opportunities — opportunities that will shape the Canadian research agenda and expand and enhance the impact of health care and health services research; opportunities that will integrate the activities of researchers across the country who are focused on meeting common goals; opportunities that will attract private-sector funding for research and help to expedite the commercialization of research results leading to health, economic and social benefits for all Canadians; opportunities that will speed the identification of new, more effective health discoveries, treatments and practices that will improve the health of Canadians; opportunities that will open up new avenues to translate and disseminate research findings into health care practice through improvements in health services, health service products and a strengthening of the health care system itself; opportunities, my fellow senators, to enhance Canada's competitiveness in the global economy, generating unforeseen economic opportunities and at the same time promoting excellence of Canadian health research on an international stage.

The federal government's contribution and funding for the financing of health research excellence in Canadian hospitals,  
[ Senator Keon ]

universities, health research centres and institutions will effectively be doubled. This time we will not just be looking at a simple increase in funding. Instead, funding will flow into a well-designed, nationally integrated health research system that will maximize our human, intellectual and physical resources. As a result, it will provide a knowledge base for national health policy and superb health care for continuing our healthy nation.

Honourable senators, under Bill C-13, the Medical Research Council Act will be repealed and 40 years of the existence of the Medical Research Council will come to an end. Indeed, I worked with and served on that council for 25 years, and, although I am sorry to see it go, I am truly excited about what has come in its place. The fact that this is being done with the full support of the MRC community in and of itself speaks strongly to the trust this community has in the vision and proposed structure of CIHR.

• (1850)

It has been a wonderful experience to see the medical, scientific, health care, academic, industrial and other communities come together to make the CIHR a reality.

The CIHR concept emerged in 1998 from the work of a task force broadly representative of many diverse interests in health research. Plans to proceed with the proposal of the task force were announced in the 1999 budget, which set aside an additional \$225 million, over the current MRC funding, by the year 2001-2002 for the new CIHR.

Bill C-13 was tabled by the Minister of Health and received its first reading in the other place on November 4, 1999.

The CIHR would take over from the MRC, as well as adopt a broader focus. It is, therefore, to be expected that the legislation for the CIHR be more comprehensive than that of the MRC. Most of Bill C-13 deals with the transfer of human resources, assets, liabilities and legal proceedings from the MRC to the CIHR. In terms of the actual functioning of the CIHR, the bill proposes that it would have several powers and functions additional to those of its predecessor. It should be noted that the MRC has, in fact, already undertaken to perform some of these additional powers and functions on its own; however, the remaining powers and functions would set the CIHR apart from the MRC. These functions would include working with the provinces as well as with the people and organizations both within and outside of Canada, and keeping government and the public informed on issues of health and health research. In addition, the Governor in Council could assign to the CIHR any other function necessary for that body to achieve its objective.

There have been some concerns expressed about the administrative costs of the CIHR. Administrative costs are the basic costs of keeping the organization functional. They include the costs of the governing council, the president's office, the secretariat costs, including costs for financial and information systems and rents, and costs of managing and administering research programs. In the Medical Research Council, these costs have been kept below 5 per cent of the total budget. In other agencies, such as the Social Sciences and Humanities Research Council, these costs are about 8 per cent.



The CIHR is designed to be a transformative organization, and some additional strategic management investments will be needed to support that transformation. New institutes will be created that will focus on the health needs of Canadians, and these will have scientific directors and small staffs. There will also be an emphasis on the translation of new knowledge into new clinical applications, health services and products. As a result, much better results for each resource dollar will accrue.

There are two assurances that all expenses will be kept at a minimum. First, the research community itself is very vigilant, and it has proven that in the past. Second, CIHR estimates will come to the standing committee every year.

There have also been some concerns raised about the appointment process. The process of appointments for the CIHR president and the governing council has been remarkable in its openness and in the engagement of the Canadian public. The traditional process is for the potential candidates to be both nominated and selected by the government. However, in the case of the CIHR, there has been a process of public identification of suitable candidates for the leadership of the CIHR.

In December of 1999, a public call for nominations was issued for both the president and governing council. Respondents were encouraged to nominate candidates through either the submission of their curricula vitae or through a Web-based application process. The response to this call for proposals was tremendous. Over 450 high-quality nominations were received for these positions.

Following the nomination process, selection committees were established to significantly narrow down the list of candidates for the president and for the governing council. The committees were made up of outstanding leaders in research, presidents of universities, voluntary sector organizations and international research leaders. The committees, in essence, certified that the remaining candidates would meet the threshold of qualifications to hold the positions outlined in Bill C-13.

The recommendations of these committees have been transmitted to the government, which will make the final decisions upon proclamation of the CIHR Act.

This unique process is substantially different than the appointment process for other federal organizations. It has engaged the community and has ensured that the best nominations for the Canadian research community are included in the process.

Before I conclude, honourable senators, I wish to take this opportunity to recognize and pay tribute to the strong leadership of Dr. Henry Friesen, Chair and President of the MRC. Indeed, I was with Dr. Friesen at the meeting of the Medical Research Council that we hosted at the Heart Institute the night the concept was born and presented to Minister Rock. In many ways, Dr. Friesen's foresight and energies have served as the catalyst for moving us closer toward achieving the vision of creating a new national institute that will transform, modernize and link

health research organizations across this country. I must say his efforts were absolutely tireless and his genius shone throughout the entire process.

Honourable senators, it is with strong conviction and a great sense of pride that I support Bill C-13 and ask for your endorsement.

**The Hon. the Speaker *pro tempore*:** Is it your pleasure, honourable senators, to adopt the motion?

**Hon. Senators:** Agreed.

Motion agreed to and bill read second time.

REFERRED TO COMMITTEE

**The Hon. the Speaker *pro tempore*:** Honourable senators, when shall this bill be read the third time?

On motion of Senator Carstairs, bill referred to the Standing Senate Committee on Social Affairs, Science and Technology.

## PAYMENTS IN LIEU OF TAXES BILL

SECOND READING—DEBATE ADJOURNED

**Hon. Wilfred P. Moore** moved the second reading of Bill C-10, to amend the Municipal Grants Act.

He said: Honourable senators, I rise this evening to speak on second reading of Bill C-10, the short title of which is the Payments in Lieu of Taxes Act. As a former municipal politician, I am pleased to be sponsoring this legislation on behalf of the government.

Bill C-10 addresses a longstanding need to modernize the program by which municipal governments are compensated for the services they provide to federal facilities. This is a bill of good government that will strengthen the relationship between the Government of Canada and close to 2,000 local communities from coast to coast to coast. I am, therefore, hopeful that honourable senators will give this bill their unanimous support.

We are all familiar with the large number and tremendous variety of facilities operated by the Government of Canada across the country. These Parliament buildings are perhaps the most recognized and best known of these facilities, but there are many others. The Government of Canada owns office buildings in provincial and territorial capitals and other municipalities throughout Canada.

**The Hon. the Speaker *pro tempore*:** Senator Moore, I am sorry to interrupt, but it is now seven o'clock.

Is it your pleasure, honourable senators, that I not see the clock for another hour?

**Hon. Senators:** Agreed.

**Senator Moore:** The Government of Canada also operates wharves, docks, airports, penitentiaries, museums, interpretative centres in national parks and recreational facilities. The Government of Canada maintains defence establishments, court buildings, historic sites, and the list goes on. Virtually all of these facilities place demands on the municipal service infrastructure — demands for water and sewer services, road maintenance, waste disposal, public transit, and so on. The Government of Canada has a moral obligation to pay a reasonable portion of the costs of these services to ensure that federal facilities are an asset at the community level rather than a liability.

• (1900)

Yet, honourable senators are no doubt aware that the Government of Canada is exempt from local taxation under section 125 of the Constitution Act, 1867. In order to protect this important constitutional principle while paying its fair share of the cost of local services, for the past 50 years the Government of Canada has been paying municipalities grants in lieu of taxes.

The program is managed by the Department of Public Works and Government Services, and it has worked very well for many years, serving the interests of municipalities and the Government of Canada alike. Payments in lieu of taxes to municipalities now exceed \$375 million annually. This money is helping local communities maintain or improve services and support economic development. It brings a tangible federal presence and influence to the communities that receive it.

However, as is the case with all good programs, there is room for improvement. Many far-reaching changes have been made in municipal taxation regimes over the past 20 years, changes that have resulted in significant increases in payments in lieu of taxes for federal properties. While the government has an obligation to pay its share of the cost of municipal services, it must also protect the broad interests of federal taxpayers by avoiding excessive program costs.

With that in mind, honourable senators, I believe that Bill C-10 strikes an excellent balance of fairness, equity, and predictability in the management of federal payments in lieu of taxes. Its goal is not to subvert the existing approach but to build on it for the new millennium.

Let me quickly explain the key elements of Bill C-10, which is intended to ensure that federal payments in lieu of taxes are as much like the taxes levied against private landowners as possible while still recognizing the government's constitutional exemption from local taxation.

Perhaps the most obvious impact of Bill C-10 is that it will change the name of the legislation and of the program itself. In future, we will use the terminology "payments in lieu of taxes" instead of "grants in lieu of taxes." This is not merely a superficial change, honourable senators. It implies a more explicit and respectful relationship between the two levels of government and indicates that the Government of Canada is accepting the same responsibilities as are other property owners.

This change in name is underscored by a goodwill clause in Bill C-10 that states the government's commitment to fairness and equity and the administration of federal payments in lieu of taxes.

Substantive changes in the legislation include a requirement that the Government of Canada pay a supplementary amount to a municipality when a payment is unreasonably delayed. This will encourage federal departments and agencies to meet the payment schedules put in place locally, ensuring more equitable treatment of municipalities. The Minister of Public Works and Government Services will have the sole discretion to decide whether or not a payment was late, and has already indicated that he will be seeking a high level of compliance by federal property holders.

Bill C-10 will also improve the fairness of the process by establishing in law a dispute advisory panel through which municipalities can challenge federal decisions on payments in lieu of taxes. The Federation of Canadian Municipalities and municipal assessment authorities will be consulted on the makeup of the panel.

Honourable senators, I am pleased to say that Bill C-10 also addresses the issue of tax defaults by tenants of federal properties. The proposed legislation includes a new discretionary power that allows the Minister of Public Works and Government Services to make payments in lieu of taxes on tenant-occupied property when the minister is convinced that the municipality has made reasonable efforts to collect from the tenant.

Another notable change is the expanded definition of "real property" contained in Bill C-10. This means that, in future, such structures as employee parking lots, outdoor swimming pools, and golf courses, which are currently excluded from the legislation, will be subject to making payments.

This proposed legislation also ensures that First Nations governments will have the same access to federal payments in lieu of taxes as do other taxing authorities. To this end, the amendments contained in Bill C-10 will address certain barriers that limit the ability of First Nations to take advantage of these payments in their quest for greater financial independence.

Honourable senators should also be aware that the Government of Canada is undertaking administrative changes to the Municipal Payments Program that are not part of Bill C-10. For example, a program advisory council will be established to advise the Minister of Public Works and Government Services on administrative and policy issues related to the management of the payments in lieu of taxes program.

As well, Public Works and Government Services Canada has engaged national professional appraisal associations to draft best practices for unusual types of federal properties, such as penitentiaries, airports, defence establishments, and national parks. The goal is to reduce the number of valuation dispute related to these properties and to ensure consistent valuation treatment of similar properties across Canada.



Honourable senators, Bill C-10 is simply confirming that the Government of Canada respects the standards set for other property owners, that it values the services it receives from municipal governments, and that it is committed to being a responsible property owner and a conscientious member of the community.

I mentioned at the outset that Bill C-10 responds to a longstanding need to reform the grants in lieu of taxes program and legislation. In fact, Bill C-10 culminates several years of review and discussion. Many of the provisions originate from a joint technical committee of representatives from the Federation of Canadian Municipalities, the Treasury Board Secretariat, and Public Works and Government Services Canada. The committee was established in 1995 and has produced two reports.

Other suggestions were put forth by municipal leaders, appraisal professionals, and other stakeholders who met with the Minister of Public Works and Government Services during a series of 11 round table discussions held in the summer of 1998. These meetings took place in major centres across Canada. At stop after stop, the minister was told that the municipal payments program is crucially important to local communities, that it bolsters the relationship between the Government of Canada and the municipalities, and that it can and should be strengthened.

On behalf of the municipalities who depend on this program, and in the interests of fairness, equity, and predictability, I would ask honourable senators to heed that message today and support Bill C-10.

On motion of Senator Atkins, for Senator Grimard, debate adjourned.

## CANADA BUSINESS CORPORATIONS ACT CANADA COOPERATIVES ACT

BILL TO AMEND—SECOND READING—DEBATE CONTINUED

On the Order:

Resuming debate on the motion of the Honourable Senator Kirby, seconded by the Honourable Senator Cook, for the second reading of Bill S-19, to amend the Canada Business Corporations Act and the Canada Cooperatives Act and to amend other Acts in consequence.

**Hon. Dan Hays (Deputy Leader of the Government):**

Honourable senators, I know that Senator Wilson wishes to speak to this order. However, I observe that Senator Tkachuk is the member opposite officially responding on this bill and, as such, he is entitled to a 45-minute time allocation. I would ask honourable senators for leave for that time allocation to be reserved to him, even though Senator Wilson speaks now on this bill.

**The Hon. the Speaker pro tempore:** Is leave granted, honourable senators.

**Hon. Senators:** Agreed.

• (1910)

**Hon. Lois M. Wilson:** Honourable senators, I wish to speak briefly to Bill S-19, particularly on clause 137(5)(b)(1). My interest is motivated by an increasing awareness that Canada needs to look carefully at the relationship between corporate social responsibility and investment, particularly internationally, and the role of shareholders in corporations. The bill, as amended, is a vast improvement on the former bill and I support it. It encourages and allows shareholders to communicate more freely with each other and with corporations. It greatly expands the rights of shareholders.

However, while I welcome the proposed amendment that requires a company to circulate proposals from beneficial shareholders and to amend the act so as not to narrow the grounds for a company to exclude a shareholder proposal, I have some concerns.

Honourable senators, I believe that Bill S-19 could be detrimental to shareholder issues on corporate responsibility that some small shareholders may wish to raise. For example, Christian Brothers Investment Services, Inc., in New York, although supportive of the main direction of the bill, as am I, has this to say:

The issue of Talisman Energy Inc.'s human rights record in Sudan is an issue that can have financial consequences to us as shareholders, and therefore is an appropriate concern for this process. Please know that our investors would be very concerned about investing in Canada if they were not assured of a system that supported their rights as shareholders to bring matters of concern to corporate management.

Yet, Talisman Energy refused to circulate a proposal in 1999 on the grounds that the proposal was submitted for political, religious, social or similar cause.

Retaining the corporate social responsibility exclusion without establishing a right of administrative appeal is, in my judgment, not wise. Small minority shareholders who may have a genuine interest and concern that could properly be the subject matter of a shareholder proposal but whose proposals have been excluded will likely not be able to have the resources to fight their exclusion in the courts. The inclusion of the phrase "unless the person who submits the proposal demonstrates that the proposal relates in a significant way to the business or affairs of the corporation" to the tail end of the present corporate social responsibility exclusion is positive only if it is made clear that the initial onus is on the corporation to justify the exclusion. Otherwise, the company holds all the power and the shareholder is at its mercy.

Moreover, if the social responsibility exclusion is retained, the shareholding and time holding requirements must be removed. Otherwise, small shareholders will face a two-pronged test to bring forward shareholder proposals. If social responsibility is excluded, then minimum shareholding and time holding requirements are appropriate.



Honourable senators, much effort has gone into meeting concerns that a more open process would lead to abuse by shareholders, but these concerns need to be revisited for the sake of responsible small shareholders. According to documents obtained from Industry Canada through the Access to Information Act, eliminating the present corporate responsibility exclusion was supported by a number of smaller, socially responsible investment groups. It was opposed by the larger corporations such as the Coalition on CBCA Reform, Imperial Oil, Nova Corporation, Osler Hoskin and Harcourt, and TransAlta Corporation. To be small is not necessarily to be irresponsible.

I hope that the Senate committee examining this bill will indeed give the bill serious sober second thought in its deliberations in order to demonstrate more equitable access by all the shareholders.

**Some Hon. Senators:** Hear, hear!

On motion of Senator DeWare, for Senator Tkachuk, debate adjourned.

## FINANCING OF POST-SECONDARY EDUCATION

### INQUIRY—DEBATE CONTINUED

On the Order:

Resuming debate on the inquiry of the Honourable Senator Atkins calling the attention of the Senate to the financing of post-secondary education in Canada and particularly that portion of the financing that is borne by students, with a view to developing policies that will address and alleviate the debt load which post-secondary students are being burdened with in Canada.—(*Honourable Senator Callbeck*).

**Hon. Catherine S. Callbeck:** Honourable senators, it is a pleasure to rise today and participate in the debate on this inquiry. I first wish to thank Senator Atkins for bringing it to the floor of the chamber. This issue has not been formally debated in this house since the Special Senate Committee on Post-Secondary Education presented its final report in December 1997. However, I do not believe that there can be any doubt in the minds of honourable senators about the significance of this issue.

National surveys repeatedly put education, along with health care, in the top areas of importance and concern for Canadians. A reason for this concern is the high debt loads accumulated by students upon graduation. Debt loads are increasing mainly because students are now required to pay a greater portion toward the cost of their education. For example, if we look at 1982, tuition fees represented 8 per cent of the university's operating revenues, where in 1998 they represented 17 per cent of such revenues. However, even with rising tuition fees, figures

[ Senator Wilson ]

from Statistics Canada show that the new enrolment has increased on average by 20 per cent between 1987 and 1997.

Honourable senators, one must ask the following question: If debt loads are so high, then why is that enrolment figure increasing? That question is difficult to answer, for it attempts to find out why individuals decide to pursue higher education. It is known from various studies that such a decision is complex and involves a variety of motivations and barriers. However, one thing is clear: In many sectors of the economy today, a post-secondary degree has replaced high school as the minimum requirement for entry into the workforce. Therefore, the predominant view appears to be that while the cost of studies and debt load are definitely problematic, most students do not see that cost as reason enough to give up their studies after high school. In other words, given the choice of incurring debt or not attending a post-secondary institute, the majority of students seem prepared to incur the debt and pay what it takes to position themselves for better employment opportunities in the future. Students appear to view post-secondary education for what it is — an investment in themselves and in their future.

How does the prospect of large amounts of debt affect the decision of a student from a low-income background? Do tuition fees and student debt have any impact on accessibility?

In its report to this chamber, the Special Senate Committee on Post-Secondary Education also asked that question. It recommended that the federal government and the Council of Ministers of Education Canada evaluate the effect that the prospect of high debt has on accessibility. These two parties made a joint announcement in November of 1999 highlighting their intention to conduct such a study. Unfortunately, the results are not yet available. However, the Maritime Provinces Higher Education Commission conducted a similar study and published its results in October 1997.

• (1920)

It found that there was a growing debt problem among the maritime student population but that high levels of debt did not in general, deter students from studies beyond high school. However, they did find that the weight of student debt was unequally borne by those in less fortunate financial situations.

This study found that 52 per cent of students in the maritime from lower-income families stated that they would have second thoughts about higher education as a result of debt concerns. Only 29 per cent of students from middle- to high-income families had the same concern. These figures, honourable senators, are of concern, for all the relevant data points to the fact that one of the best ways to get out of poverty, or to improve your income situation, is through education. Therefore, if high debt levels are seen by some as a barrier to post-secondary education, something must be done to alleviate this and, in turn, to encourage all young people to pursue higher education. For, if nothing is done, we will be creating a society of haves and have-nots, the haves being those who can afford financially to pursue higher education, and the have-nots being those who feel they cannot.

We are now at a time when an undergraduate or college degree has become a minimum standard of employment in many areas. This is due, in part, to the shift in the focus of our economy. Our economy has shifted from one based mainly on industry and natural resource extraction to one that is information-based, where the use of knowledge by highly mobile workers is more important than the machine-driven production of goods. As a result, education is becoming even more crucial, not just for individuals but for society as a whole.

The Organization for Economic Cooperation and Development, or OECD, underscored this in their 1996 report entitled "Lifelong Learning for All," when they said:

Education plays a critical role in raising the skills and competencies of the population, thereby improving the capacity of people to live, work and learn well. A well educated and well-trained labour force is critical to the social and economic well being of countries.

All this is not to say that Canada is not doing an excellent job in providing for the education of its citizens. On the contrary, Canada's emergence as a highly educated society is not new. Our standards, already high by international comparisons, improved substantially during the 1990s. According to a report released on Monday, March 21, 2000, by Statistics Canada, more young people than ever before graduated from high school, and more of these graduates went on to higher education.

In 1990, 20 per cent of people aged 25 to 29 in Canada had less than high school education. By 1998, that percentage had dropped to 13 per cent. Also, between 1990 and 1998, the percentage of individuals in this age group who had university degrees rose from 17 per cent to 26 per cent.

Canada also does well under international comparisons. According to recent OECD indicators, 48 per cent of our population aged 25 to 65 had completed some form of post-secondary education in 1998. That is well above the OECD average of 23 per cent, and also considerably higher than the United States, the second highest ranked country, at 34 per cent.

As you can see, honourable senators, Canada continues to be ahead of the curve in terms of educating our citizens. However, because of climbing student debt loads, as well as an increase in the loan default rates, we are failing some students, namely, those who opt not to attend because they feel they cannot afford to, and others who have difficulty with repayment after graduation. Therefore, the solution should focus on providing students with more options and flexibility when repaying their debt, with particular provisions geared to those in disadvantaged situations, so as to ensure accessibility.

The federal government and the provinces have begun to introduce such methods. In 1998, the Canadian Opportunities Strategy was introduced in the federal budget. There were a variety of new measures to help manage student debt, including: tax relief for interest on all student loans; extension of interest relief after graduation; extended repayment periods for those who need it; a reduction in the loan principal for those who are still in financial difficulty; and finally, millennium scholarships.

These measures have ensured that hundreds of thousands of students have had an easier time with respect to repayment. Furthermore, they also answer some of the recommendations made by the special Senate committee.

Provincial governments have also instituted programs to assist students with their debt. These are in the form of loan remission programs. A loan remission is a grant awarded to students upon successful graduation. These amounts vary by province. For example, in my own province of Prince Edward Island, on any amount borrowed over \$6,000, up to a maximum of \$2,000 per year is forgiven.

These programs are positive initiatives, and they should be built upon. Unfortunately, it is too early to assess what impact they have had on accessibility. However, given today's default rate of one in three, it appears that some students are falling through the cracks.

I would like to see a system where loan payments are tied to a student's starting salary, and then adjusted accordingly with salary increases as career and experience grow. In addition, I think loans should be awarded interest-free status for a fixed period of time after graduation.

A similar system is presently in use in Australia, and it appears to be working well. In order to counteract fraud and save administration costs, payments, pegged to a person's annual income, are collected through the income tax system.

I would like to see a system that would continue to enable young people in every province to reach beyond high school toward higher levels of learning if they so choose. In order to assist those who may not attend because the fees are high, I suggest a fixed period of interest relief, greater loan remission payments, and flexible repayment options, including loan payments tied to a student's salary. These initiatives would further demonstrate our belief in our students and our confidence in their futures in the knowledge-based economy.

Honourable senators, the challenge is to build on the system that we have, to develop a coordinated, equitable framework for the financing of post-secondary education across Canada so that every student who chooses can go on to higher levels of learning after high school. This is an important issue. I encourage other senators to participate in this debate.

**Hon. Norman K. Atkins:** Honourable senators, would the Honourable Senator Calbeck entertain a question?

**Senator Calbeck:** Of course, honourable senators.

• (1930)

**Senator Atkins:** First, I wish to thank the honourable senator for her presentation. It was excellent. We all have our own solutions to the problems of student debt. My question is simple: Do I take from what the honourable senator has said that anyone who graduates from high school, regardless of their demographic circumstances, should have the right to attend post-secondary education?



**Senator Callbeck:** I do not know what the honourable senator means by that. Is he saying that they should be able to attend free of charge?

**Senator Atkins:** I am talking about some form of financial support.

**Senator Callbeck:** Yes, I think there should be some form of financial support. However, it is obvious that some students were not accommodated.

As I mentioned, various initiatives were undertaken by the federal government in the 1998 budget, but it is too early to know how many students will be affected. However, there will probably be thousands of students to whom those initiatives will be helpful in paying down their debt.

In answer to your question, yes, I think some students are falling through the cracks and we could be doing more.

**Senator Atkins:** The statistics that I have show that almost 1 million students now qualify for post-secondary education in one form or another and 300,000 are in a situation where they need financial support. There seems to be a problem with many of those 300,000. Whether they have the opportunity to proceed is questionable. Not only does it affect them personally, but we now are hearing incredibly bad stories about how students in their fourth year are anywhere from \$25,000 to \$30,000 in debt. The spinoff is also affecting their parents, especially those who live in Atlantic Canada. That is an incredible amount of debt for anyone to carry.

Is it possible to provide grants so that students can receive some support? Repayment of that loan would then take effect only after the student graduated and began a permanent job. Furthermore, there should be some period of grace before a student would have to pay back that loan with interest.

**Senator Callbeck:** That is what I suggested. The payment should be geared to the salary. There should be a fixed period of time before interest begins to accumulate on the debt.

Having said that, the government has taken great initiatives along this line to assist our students. Many were spelled out in the 1998 budget. The report of the Special Senate Committee on Post-Secondary Education recommended looking at this entire area to determine whether students who come from low-income families are particularly disadvantaged. That is being done at present by the provincial ministers and the human resources department, which announced that study in November of 1999. It will be interesting to see those results.

**Senator Atkins:** In the most recent budget, scholarship deductibility has been increased from \$500 to \$3,000. Does Senator Callbeck not think that any scholarship should not be considered a taxable benefit? Frankly, it penalizes not only the students but also the institutions because the institutions raise the money for scholarships and then pass them on to their students. There is, then, a taxable repayment to government. Do you not think we should eliminate that altogether?

**Senator Callbeck:** I was happy to see the government take that initiative. I do not know about eliminating it altogether. There must be some figure. It is now at \$3,000. It may be that the figure should be higher, but let us see how it works out.

On motion of Senator Graham, debate adjourned.

## RELIGIOUS FREEDOM IN CHINA IN RELATION TO UNITED NATIONS INTERNATIONAL COVENANTS

INQUIRY—DEBATE CONTINUED

On the Order:

Resuming debate on the inquiry of the Honourable Senator Wilson calling the attention of the Senate to religious freedom in China, in relation to the UN international covenants.—(*Honourable Senator Andreychuk*).

**Hon. A. Raynell Andreychuk:** Honourable senators, I am pleased to note that the inquiry of which Senator Wilson gave notice on November 17, 1999, led to an interesting debate in this chamber. I should like to add some of my own comments.

As could be expected, Senators Austin, Di Nino and Poy have enlarged the debate beyond the scope of Senator Wilson's inquiry and into such issues as human rights and trade and the so-called Asian values debate.

Honourable senators will recall that in December 1998, the Standing Senate Committee on Foreign Affairs tabled its report entitled "Crisis in Asia: Implications for the Region, Canada, and the World." In debating human rights and trade and Asian values I wish to reiterate some of the points I made in my speech on Thursday, May 13, 1999, in addressing that Senate report.

With respect to human rights and trade, Professor Brian Job of the Institute of International Relations, University of British Columbia, pointed out:

The basic argument in my remarks is that we Canadians in academic, government and private sectors cannot simply define our relationship in narrow economic terms, that is, jobs, jobs, jobs and trade, trade, trade. I argue that if we define our foreign policy and our bilateral relations with Asia solely in economic terms, we would be myopic because we will eventually undermine our economic interests and our success in the region.

He went on to state:

Increasingly, Canada will find that its economic interests have social, political and security implications.

Further, page 105 of the Senate report reads as follows:

The Committee believes that the dichotomy between trade and human rights is a false one in the sense that the two entities are interwoven. What is coming to be realized by governments, policy makers, and businesses alike is that the usual acceptance of the rule of law, the outlawing of corrupt practices, respect for workers' rights, high health and safety standards, and sensitivity to the environment are not only morally justifiable; they are good for business. They promote and complying with human rights, a country fosters the political and consumer stability for economic prosperity and the fulfilment of trade commitments.



Business also has an important role to play, both in human-rights promotion and in ensuring that it itself does not contribute to abuses.

The committee then went on to state that Canada should not "Leave its human rights values at the door" in its commercial and other dealings with countries.

Effectively, the committee — and I concur — stated that economics does not come first and human rights second, that they go hand in hand.

Recommendation 18 in the Senate report states:

That Canadian foreign policy include the following group of principles as a minimum requirement in enunciating a clear stance on human rights:

- Adherence to the Universal Declaration of Human Rights is the responsibility of all states. As such, Canada has the responsibility to encourage Asia Pacific countries to adhere to and comply with the international human rights declarations and, in particular, instruments that they have signed.

- Canada has an important role to play in assisting its Asia Pacific partners in boosting their reform efforts and fostering their human rights capacity to develop their own human rights strategies. Canada should foster multilateral, regional and bilateral dialogues with other countries to draw them more fully into the international human rights system...

I shall come back to this point in a moment.

• (1940)

The second aspect that I should like to address is the misleading Asian mystique that somehow makes us think of the Asian countries and China in particular as different from all others. Surely, every country, including those in Africa, in South America and elsewhere, has its own unique history, culture and background. Why is it that we have little difficulty in forcefully raising human rights issues in countries in Africa and South America, and indeed in the former Soviet Union, but we are reticent to do so in Asia-Pacific and, more important, in China? Size seems to be the answer. However, from a human dimension, surely the life of an individual in China is equal to and as important as any life in Africa or Canada.

We must be reminded that the Universal Declaration of Human Rights is a declaration for peoples and not for nations. Minister Axworthy himself recently made that point in his quest for the new human security agenda. He has pointed out that there are two cornerstones in the United Nations, one being the declaration, which is a declaration protecting individuals, while national sovereignty is the basis of the charter. His inclination — and I would have thought to be, on the side of the individual in the protection of their rights — is the right one irrespective of the country in which they find themselves.

This Asian-values debate has certainly lessened since the Asian financial crisis. Prior to that, as our report indicated, it was an excuse not to make the changes required. As we pointed out in our report:

The Asian financial crises in 1997 has proven that there is no mystique in Asia-Pacific, or put another way, that Asian countries have found no way around the usual economic forces and rules.

Therefore, when Asian countries ran into difficulty, they were quite willing to enter into a dialogue to make the kinds of changes that would be compatible with good governance and human rights adherence that they had previously not been prepared to do.

The only country that seems reluctant is China. We should note that, while there have been economic gains in China and while China has made remarkable progress in opening its markets and other institutions, China still has the largest army in the world, with wealth being siphoned off for weapons. The real need is to encourage de-escalation.

As a subpoint to this, I find it troubling that, every time human rights is raised as an issue for analysis in China, some individuals jump to the conclusion that sanctions are being suggested and state that sanctions are much more destructive than dialogue. First, I am inclined to agree that constructive dialogue is better than isolation through sanctions, but it is not an either/or situation. Dialogue must, in fact, be constructive and it must produce results. Otherwise, it is merely a facade to ignore human rights and to deflect from the real agenda.

Further, there is a whole host of measures between constructive dialogue and sanctions that should be utilized. Many of them are existing mechanisms within the international community and, therefore, it is a disservice to balkanize the debate.

Senator Poy has laid out her analysis of Asian values, reminding us of our own poor record in the past on human rights and indicating that the collectivity argument has weight. I can only state over and over again my belief that the Universal Declaration of Human Rights embodies principles, values and rights that are, in fact, universal in nature and not unique to the Western World.

This is why I have been very conscious not to accept the government's position that we are projecting our values abroad. Rather, I personally subscribe to the policy of furthering the universal values to which China agreed when it entered the United Nations; and, while not yet ratified, they have gone so far as to sign the two main covenants.

I, for one, am not an expert on Asian values, and do not presume to be one. However, I turn to some eminent sources who put out the alternate position. Professor Amitav Acharya, associate professor at the Department of Political Science at York University and also professor at the University of Toronto/York University Joint Centre for Asia-Pacific studies, has responded to the question of Asian values and human rights by stating:

My definition of Human Rights is rights that every person enjoys simply by being human. There are no cultural conditions attached to this. Governments say that there will be a core group of human rights, but whether they observe it in practice is another question, the issue becomes very complicated. Much research has been done on the question of human rights in different cultures and they have come up with the same point that you have made. Every culture acknowledges and respects the dignity of human beings. We just have to make sure that political authorities do not abuse it.

Amartya Sen, winner of the 1998 Nobel Prize for Economic Science, the author of *Development as Freedom: Human Capability and Global Need* and an economist with the World Bank, stated the following in the *Journal of Democracy* in July 1999 with respect to the Asian values. I should also note that Sen was instrumental in building the human development index for the UNDP on which Canada came out to be number one. I believe him to be well versed in understanding the human dimension of this issue. He states:

Confucius is the standard author quoted in interpreting Asian Values...Confucius himself did not recommend blind allegiance to the state. When Zilu asks him "how to serve a prince," Confucius replies —

Here, Mr. Sen adds, in brackets, that this is a statement that the censors of authoritarian regimes may want to ponder.

'Tell him the truth even if it offends him.' Confucius is not averse to practical caution and tact, but does not forego the recommendation to oppose a bad government (tactfully, if necessary): 'When the (good) way prevails in the state, speak boldly and act boldly. When the state has lost the way, act boldly and speak softly.' Indeed, Confucius provides a clear pointer to the fact that the two pillars of the imagined edifice of Asian values, loyalty to the family and obedience to the state, can be in severe conflict with each other. Many advocates of the power of 'Asian values' see the role of the state as an extension of the role of the family, but as Confucius noted, there can be tension between the two. The governor of She told Confucius, 'Among my people, there is a man of unbending integrity: when his father stole a sheep, he denounced him.' To this Confucius replied, 'Among my people, men of integrity do things differently: a father covers up for his son, a son covers up for his father — and there is integrity in what to do.'

• (1950)

He goes on to state:

The monolithic interpretation of Asian values as hostile to democracy and political rights does not bear critical scrutiny...

[ Senator Andreychuk ]

Finally, I quote Ms Maureen O'Neill, president, at the time, of the International Centre of the Human Rights and Democratic Development Centre when she testified before a committee and stated:

It has become increasingly clear that issues of trade and investment ought not to be discussed in isolation from human rights and democracy.

Ms O'Neill further stated that the ideas of human rights, as being translated to us through APEC members, were not the ideas of the citizenry but were really the ideas of the leaders, and that the fundamental values that we call human rights were being echoed in those countries.

Therefore, I ask if it is really Asian values that preclude discussion of human rights, or is it the strategy of leaders to maintain absolute control for the purpose of their own position rather than for the benefit and welfare of the citizenry?

I now turn to the issue of religious freedom in China. I commend Senator Wilson for her initiative in working with her counterparts in China and for the assessments that both she and her counterparts have made. While she rightly points out that she saw no evidence of widespread intentional policy to persecute religious groups, I think she would agree that the broader picture is not one that her committee could justifiably analyze. In rereading Senator Wilson's remarks, I would at some later date ask what is meant by the term "main-line Christian churches in Canada," and what she would mean by the "highly privatized orientation of religious groups originating in Los Angeles or Taiwan."

Further, while I am on this train, I have some difficulty in referring to cults and then accepting the notion that not only are the Falun Gong a cult but that they are a destabilizing, harmful and foreign-influenced organization. It would have been more helpful if there was some evidence from Senator Wilson's counterparts as to how they came to this conclusion.

Succinctly stated, the issue of freedom of religion is guaranteed by the Universal Declaration of Human Rights, as is the freedom of association. An attempt by any government to sanction churches, in my view, is inappropriate, and the key to China's problems lies in the fact that it has recognized only five religions. I think I have at least identified the issue that it is not a question of individuality versus collectivity but rather whether the principle of collectivity is being manipulated by the government in such a way as to control the citizens. To rely very exclusively, or indeed heavily, on those churches that are functioning openly and sanctioned by the government is questionable. China still holds itself out to be a communist country but with some openness for the economy. We know now but only after the Soviet Union collapsed, of the true difficulties that churches and believers faced under the Soviet system, and believe it is a fair parallel to draw. Under the communist system and I can use Ukraine as an example, there was the official sanctioned Orthodox Church, the Orthodox Church that was underground, and the Orthodox Church that went into exile



Even that church which functioned and was accepted to be one of the patriotic churches is now finally opening up to reveal what compromises were made for survival. I can only believe that some day in China the same will happen. While the communist government did not try to eliminate religious beliefs, it did create churches for both Catholics and Protestants as well as three other government-sanctioned churches free from any links with foreign governments.

**The Hon. the Speaker *pro tempore*:** I regret to inform the honourable senator that her speaking time has expired. Are you seeking leave to continue?

**Senator Andreychuk:** I am seeking leave to continue.

**The Hon. the Speaker *pro tempore*:** Is leave granted, honourable senators?

**Hon. Senators:** Agreed.

**Senator Andreychuk:** Honourable senators. I will try to be as brief as I can.

In other words, they acknowledged five churches with stipulations. However unwelcome this may have been to many Protestants, I point out it certainly put the Catholics on a collision course, as the all-important ties with the Pope were at stake. In fact, the recently deceased Ignatius Cardinal Gong spent 30 years in Chinese prisons and labour camps for refusing to endorse a patriotic Catholic church. His struggle, it has been noted, was the concern for the proper source of authority in religious belief under a totalitarian government determined to mould the beliefs of its citizens and extract public affirmations of loyalty. One must not forget the struggle for all those prisoners of conscience who were imprisoned in the name of their faith, though it is true that China has changed course several times since then. In my opinion, even the so-called recognized churches can not be taken as the sole source of determination of religious freedom, and particularly it would be unfair to put them in that kind of spotlight as their own security could be prejudiced. Therefore, there is a delicate balance of encouraging these groups while not making them the spokespersons for the issue of religious freedom totally in China. It is, therefore, necessary for all of us to look at other sources.

Despite what China has stated with respect to the Falun Gong, for example, as being a destabilizing and harmful foreign-influenced organization, there has been no factual evidence presented. The whole concept of Falun Gong practitioners must be reviewed. Certainly, international opinion supports that the Falun Gong practitioners have not violated any real laws and that the worst case scenario would be that perhaps some have resorted to civil disobedience to fight the government's claim that they are a cult of destabilization. There is certainly evidence that a crackdown has occurred, not only on the Falun Gong but on Tibetan monks and Buddhists particularly.

I would encourage Senator Wilson and the other Canadian members to contact the Falun Gong to hear their side of the story and to seek the opinion of a whole host of legitimate and recognized non-governmental activities familiar with China and the state.

One must look at the broader issue of freedom of expression, association and religion and rely on independent groups who have access to China and who have a credible reputation. I personally place lesser weight on the United States' human rights report, for obvious reasons, but do rely very heavily on human rights organizations such as Amnesty International, Human Rights Watch and others who reported that torture and ill treatment continues to be commonplace. In the words of the Secretary General of Amnesty International:

Last year was unquestionably the most repressive year in China since the horrifying massacre at Tiananmen Square ten years earlier. Something must be done.

Further, former Liberal cabinet minister Warren Allmand, Director of the International Centre for Human Rights and Development, has said, as reported in *The Ottawa Citizen*:

Canada is undermining the multilateral efforts to affect change in China, by pursuing its own bilateral efforts.

He says it is Prime Minister Jean Chrétien's single-minded approach to boosting trade that has watered down Canada's previously harder line on Chinese human rights abuses. He goes on to state:

We think many of these things are probably decided in the Prime Minister's Office and probably not in the Department of Foreign Affairs.

**The Hon. the Speaker *pro tempore*:** Honourable senators, is it your wish that I not see the clock for another hour?

**Hon. Dan Hays (Deputy Leader of the Government):** Honourable senators, not having seen the clock for two hours and it now being 8 o'clock, I can interpret that two ways, I guess. Under our rules, when we are sitting, we rise at 6 and return at 8, or we have given leave to sit for two hours. I sense a certain restlessness in the house, and perhaps the latter interpretation would be the better approach. Shall we allow Senator Andreychuk to complete her remarks?

• (2000)

**Hon. Noël A. Kinsella (Deputy Leader of the Opposition):** Honourable senators, I suggest that we not see the clock and go through the Order Paper today, because there may be more restlessness, should it be suggested that we must come back here Friday morning. If we continue and finish the Order Paper today, it may help us greatly later this week in terms of the schedule.

**Hon. Eymard G. Corbin:** Honourable senators, there must be a sense of fairness in extending time. We were originally told that we would continue until seven o'clock. It is now eight o'clock and 23 seconds. We try to plan our lifestyles in a way in which we can maintain decent health while working these abnormal hours. It is enough to have sandwiches at noon-hour, and in committee or caucus meetings; it is pretty tough to have sandwiches again in the evening. At my age, I cannot take that too often. I know that the press will make fun of this, but I do not give a damn about the press. They are never here anyhow.

All I want is that we be able to manage our time such that we can plan our lives in a decent way, as everyone else does. This is no way to run a shop. I attach a great deal of importance to progress of legislation, but surely other things can wait.

I do not wish to be unfair to Senator Andreychuk. She believes absolutely in human rights, but this is not the first instance that she has spoken to us about human rights, and I am sure we will hear more speeches on the topic. However, is it justifiable to continue to speak about human rights at this time of the day? Why did we not adjourn at six o'clock and come back at eight o'clock? So what if we sit on Friday? I am not against a five-day or six-day week. However, let us have a lifestyle that enhances our health rather than being a detriment to it.

**Hon. Lois M. Wilson:** Honourable senators, I have an inquiry on Sudan on the Notice Paper to which I wanted to speak last Tuesday. It has not been possible to speak to it because we have run out of time each day, and apparently we are running out of time again. My next opportunity to speak to this will be when we reconvene after our break in May, which is fine. Sudan will not go away. However, I need direction on this because I was to speak to it tonight.

**Senator Hays:** I have commented on the restlessness of the house, as has Senator Kinsella. I do not know how Senator Corbin is disposed on this. We are sitting with leave. If leave is not granted, the house will automatically adjourn.

**Senator Corbin:** Senator Hays knows that he can always count on me. I am one of the senators who is always here.

**Senator Hays:** That is true and very much appreciated.

Therefore, I would ask for leave to complete our routine of business.

**The Hon. the Speaker *pro tempore*:** Is leave granted, honourable senators?

**Hon. Senators:** Agreed.

**Senator Andreychuk:** I thank the honourable senators, and particularly Senator Corbin, for those comments. I have spoken previously on human rights and I will continue to speak on this subject, as I feel strongly about it. I beg the indulgence of honourable senators one more time because I think there is some merit in proceeding now.

I strongly support Mr. Irwin Cotler, a Liberal Member of Parliament, and a coalition of 11 human rights groups in Canada that called on Canada to express concern about China's behaviour in the Human Rights Commission. Simply constructive engagement on this point is not working. Minister Axworthy has been ambivalent on these issues and it certainly would not be in line with his human security agenda to take this regressive stance. Therefore, it is clearly the Prime Minister of Canada who must take the initiative to join forces with other like-minded countries in supporting a resolution expressing concern.

After all, the present resolution that is circulating, which will probably be put to the Human Rights Commission this week, is  
[ Senator Corbin ]

not a condemning resolution, but rather one expressing concern and encouragement. If China is truly interested in working cooperatively and adhering to its obligations, and if China were truly interested in a dialogue on human rights, it would not be lobbying, as we speak, to continue only the pleasant sounding but ineffectual rights dialogue.

If Canada is not prepared to accept the United States resolution, it could put forward one of its own. Simply to continue to indicate that they are constructively engaged is not working and is not sufficient. Therefore, it is not only China that has something to account for, but also Canada.

In our report on the Asia-Pacific region, we clearly stated that it was Canada's responsibility to encourage her partners to adhere to international human rights instruments, as we are obliged to do so. To continue to buy time for China in constructive engagement and to talk about the long-term solutions by virtue of other means has not borne fruit but is jeopardizing the human security of many citizens in Canada.

As one person in an authoritarian country once said to me: It is easy for you to be compassionate to government leaders and to give them more time while you persuade them, but would you feel the same way if it were you, your child, your brother, your friend that was losing his life or being tortured or ill-treated? Would you have the same patience?

I therefore urge the Canadian government to institute its own resolution at the Human Rights Commission this week and to join forces with others concerned about the human rights record particularly with respect to religious freedom and freedom of association or, alternatively, to put in meaningful, constructive engagement at the prime ministerial level. The Prime Minister should not lead another Team Canada delegation to China this year without first advising the Chinese government that human rights would be a high and concurrent agenda.

I apologize if this statement was long. I wanted to cover the points that are important. I urge the government and member opposite, who have some influence, to join with Mr. Cotler to see whether we can make a difference in the lives of individuals in China.

On motion of Senator Kinsella, debate adjourned.

## SUDAN

### INQUIRY—DEBATE ADJOURNED

**Hon. Lois M. Wilson** rose pursuant to notice of March 21, 2000:

That she will call the attention of the Senate to the situation in the Sudan.

**Hon. Lois M. Wilson:** Honourable senators, a year ago, on March 23, 1999, I initiated an inquiry on the situation in Sudan with an update on December 7, 1999. My initial inquiry gave much of the background of the current conflict, and I encourage any who will be speaking to this inquiry to refer to that intervention.



We now find ourselves, a year later, with Sudan in the news, with hundreds of more lives lost in the interval — more lives lost than in Kosovo, Bosnia and Rwanda combined — with the brutal war continuing unabated, with Canada and other Western countries continuing to pour thousands of dollars of humanitarian aid into the country annually, with the media finally paying attention, but to only two aspects of the protracted civil war — the extraction of oil by Talisman Oil and the allegations of slavery. Either allegation could be the subject of an inquiry on its own.

The international community has not given attention commensurate with the enormity of human suffering taking place. What attention there is has been focused almost exclusively on oil extraction and not on the current peace strategies for this wartorn country. While for some stopping the flow of oil would be a giant step toward peace — although that is based on the premise that international sanctions would have to be in place as Malaysia and China own large shares in the pipeline — a significant body of opinion thinks that other aspects of the situation of Sudan have not been fully enough explored. It is those aspects I wish to raise.

• (2010)

Canada supports the formal process of peace negotiations between the Government of Sudan and the Southern People's Liberation Army, SPLA, presently being brokered by Special Envoy Daniel Mboya and his secretariat, acting on behalf of the regional African initiative called the Intergovernmental Authority on Development, IGAD. IGAD was formed in the early 1990s by African countries that wanted to get at the root of the conflict. Beginning on the premise of underdevelopment, it then began to focus efforts on a peace process for the Sudan. Currently, Western countries, including Canada, fund the IGAD secretariat through CIDA and support its work diplomatically through the International Partners Forum, IPF, where I represent Canada. The 1994 Declaration of Principles, the only document agreed to by both warring parties, constitutes the basis for the resolution of the conflict in Sudan. It is on the basis of these principles that current peace negotiations are being conducted.

Two negotiation sessions have taken place, with a third scheduled for April. My recent visit to the Horn of Africa left me cautiously optimistic about the IGAD process. At least the framework for an agreement exists and the envoys from neighbouring countries have been active since the beginning of this year. The country has been in conflict since 1956, so one can hardly expect a speedy peace settlement. IGAD has wide African support and should be fully supported until either a peace agreement is brokered or the whole process breaks down, making other mechanisms necessary.

Honourable senators, to say that things did not go smoothly in the negotiations so far is the understatement of the year. Two major issues seem intractable: the separation of religion and the state, which the Government of Sudan has not yet accepted given its strong Islamic orientation, and the right of the south to self-determination should agreement on the unity of the country

fail. Dispute persists on the geographic borders between north and south, particularly as to the status of "marginalized territories." Abyei, the Southern Kordofan, and the South Blue Nile. Moreover, the government has begun to insist that IGAD is confined strictly to the south and that the issues of the territories under dispute must take place apart from the IGAD table.

After the last round of negotiations, the SPLA, out of frustration, no doubt, announced that it will move directly to an interim arrangement before self-determination, which would probably mean the separation of the south from the north. If this happens, it will leave unanswered all the issues for a comprehensive peace. It must be noted, however, that SPLA has agreed to a third round of negotiations.

We have always said that the Sudan situation is extremely complex, and now we are beginning to appreciate that fact. Libya and Egypt have decided that IGAD has taken too long to work, and have proposed a parallel peace initiative, which unfortunately does not recognize the declaration of principles, particularly the clause on self-determination for the south, should efforts at unity fail.

Egypt is suggesting a national reconciliation process with or without IGAD. Although this runs the danger of recognizing a horizontal northern Arab solidarity that will further exclude and alienate the south, the Libyan-Egyptian initiative appears to be gaining wider acceptance. Kenya has intense possessiveness of the IGAD process and does not brook interference from other African countries; nor does Ethiopia.

A number of countries, including Canada, think that eventually all affected parties need to be party to the peace agreement, including a role for Egypt and the opposition NDA coalition. Nigeria and South Africa have also indicated interest. It is not yet clear how this will be accomplished, but any peace initiatives need to be rolled into the IGAD process. Nor is the role of the OAU and its conflict resolution unit clear.

There is broad acknowledgement that it is not possible to end the brutal war in Sudan with a series of separate, that is, piecemeal, initiatives, but the position taken by the Government of Sudan toward IGAD as a narrow, geographically defined peace forum forces the international community to do some hard thinking.

In an attempt to redefine the context, strength and support for a comprehensive peace process, Canada will try to raise the profile of the Sudan situation and the peace process in international forums such as the Security Council and at the UN Human Rights Commission in April. The objective of the Security Council is twofold: One is to address the problem of access to southern Sudan for humanitarian groups, including the UN, which access has been highly restricted over the last year or two; the second is to seek an endorsement of IGAD's mediation efforts. These initiatives may be unacceptable internationally because of the self-interest of particular countries in the Sudan. However, Canada will persist in its efforts.

Does either side really want peace? The Government of Sudan is unlikely to support an outcome in which Sudan becomes secularized, or one in which power devolves to the principal parties to the current conflict. Does it believe it can sustain the status quo indefinitely through low-level military actions and through deliberate bombing of civilian hospitals and schools? Perhaps. It speaks of the conflict as the "southern problem."

The south speaks of its "war of liberation" against government that came to power through a coup. It insists on the separation of the state and religion, and the right of self-determination, even though no government structures are in place for that eventuality. Conflict over resources such as oil and water will continue. Arabism versus Africanism will create contradictions difficult to overcome. What is at stake is the possible dismemberment of the largest country in Africa, and regional destabilization.

What steps has Canada taken or could take, given the fact that Canada is not brokering the peace but is supporting the African regional authorities who at this point are charged with that task? Already, through CIDA, Canada supports the Inter-Africa group, an IGAD resource think tank, as well as IGAD itself. It supports peace and reconciliation efforts through Waterloo's Project Ploughshares and Quebec's Alternatives that bring together warring tribes in the process of reconciliation.

Support continues for the new Sudan Council of Churches in its facilitation of reconciliation between the warring tribes of the Nuers and the Dinkas. Canada supports the Dutch Embassy's Sudanese Women's Peace Initiative, which brings together Africans and Arabs, south and north, Christian and Muslim, which movement is sponsoring an international meeting in April in the Netherlands. Of course, said the Dutch Embassy, they could never have mounted such a program without being fully present on the ground in the Sudan.

This initiative is the most hopeful sign I saw in the Sudan. The women are tired of having their husbands killed, their sons fighting a war, and a lifetime of despair and misery. Their energy, if expressed in programmatic form, could well contribute to tipping the balance of power.

Canada has also made available, through CIDA, a person skilled in conflict resolution and a political analyst to work full time in the Sudan. These efforts contribute toward consolidation of southerners, so that eventually a critical mass might emerge that could correct the imbalance of power between the north and the south.

The need for a small Canadian presence in the south has certain advantages. It does not mean that Canada is tilting in favour of Khartoum. Rather, it will allow Canada to monitor and more adequately assess the situation, including the human rights violations of both the Government of Sudan and the SPLA, and support the activities of the NGOs active on the human rights and abductions fronts. It would be able to support NGOs formerly active in the south but now temporarily withdrawn in protest against the SPLA requirement to place all humanitarian aid under their control. It could also better provide political reporting.

Canada could support a human rights desk focused on the oil regions, insisting on independent peace and human rights experts, possibly drawn from the international community through the UN. It should think about eventual compensation for internally displaced persons. It could support efforts to engage progressive Christians, Muslims, and animists in proposing solutions to both warring parties on the role of religion, provided such efforts are not a showcase for either side of the conflict. Canada could bring its experience in multiculturalism and in multi-faith communities to this situation. As well, our experience in federalism, flawed as it may be, can be a contribution.

The massive, longstanding suffering continues, as word continues to come of the government continuing to deliberately target and bomb civilians in hospitals and schools, and to use roads built for oil extraction to move troops. The problems seem intractable, but a conflict of many years' standing will not come to an end easily or soon. As long as it appears that Canada can have a constructive role, our country intends to remain fully engaged.

Thank you for your patience.

**Hon. Senators:** Hear, hear!

On motion of Senator Andreychuk, debate adjourned.

## ADJOURNMENT

Leave having been given to revert to Government Notices of Motions:

**Hon. Dan Hays (Deputy Leader of the Government),** with leave of the Senate and notwithstanding rule 58(1)(h), moved:

That when the Senate adjourns today, it do stand adjourned until tomorrow, Wednesday, April 5, 2000, at 1:30 p.m.:

That at 3:30 p.m. tomorrow, if the business of the Senate has not been completed, the Speaker shall interrupt the proceedings to adjourn the Senate;

That should a division be deferred until 5:30 p.m. tomorrow, the Speaker shall interrupt the proceedings at 3:30 p.m. to suspend the sitting until 5:30 p.m. for the taking of the deferred division; and

That all matters on the Orders of the Day and on the Notice Paper, which have not been reached, shall retain their position.

Motion agreed to.

The Senate adjourned until Wednesday, April 5, 2000 at 1:30 p.m.



## **APPENDIX**

Officers of the Senate

The Ministry

Senators

(Listed according to seniority, alphabetically and by provinces)

Committees of the Senate

**THE SPEAKER**

THE HONOURABLE GILDAS L. MOLGAT

**THE LEADER OF THE GOVERNMENT**

THE HONOURABLE J. BERNARD BOUDREAU, P. C.

**THE LEADER OF THE OPPOSITION**

THE HONOURABLE JOHN LYNCH-STAUNTON

---

**OFFICERS OF THE SENATE****CLERK OF THE SENATE AND CLERK OF THE PARLIAMENTS**

PAUL BÉLISLE

**DEPUTY CLERK, PRINCIPAL CLERK, LEGISLATIVE SERVICES**

GARY O'BRIEN

**LAW CLERK AND PARLIAMENTARY COUNSEL**

MARK AUDCENT

**USHER OF THE BLACK ROD**

MARY McLAREN



**THE MINISTRY**

According to Precedence

(April 4, 2000)

The Right Hon. Jean Chrétien	Prime Minister
The Hon. Herbert Eser Gray	Deputy Prime Minister
The Hon. Lloyd Axworthy	Minister of Foreign Affairs
The Hon. David M. Collenette	Minister of Transport
The Hon. David Anderson	Minister of the Environment
The Hon. Ralph E. Goodale	Minister of Natural Resources and Minister responsible for the Canadian Wheat Board
The Hon. Sheila Copps	Minister of Canadian Heritage
The Hon. John Manley	Minister of Industry
The Hon. Paul Martin	Minister of Finance
The Hon. Arthur C. Eggleton	Minister of National Defence
The Hon. Anne McLellan	Minister of Justice and Attorney General of Canada
The Hon. Allan Rock	Minister of Health
The Hon. Lawrence MacAulay	Solicitor General of Canada
The Hon. Alfonso Gagliano	Minister of Public Works and Government Services
The Hon. Lucienne Robillard	President of the Treasury Board and Minister responsible for Infrastructure
The Hon. Martin Cauchon	Minister of National Revenue and Secretary of State (Economic Development Agency of Canada for the Regions of Quebec)
The Hon. Jane Stewart	Minister of Human Resources Development
The Hon. Stéphane Dion	President of the Queen's Privy Council for Canada and Minister of Intergovernmental Affairs
The Hon. Pierre Pettigrew	Minister of International Trade
The Hon. Don Boudria	Leader of the Government in the House of Commons
The Hon. J. Bernard Boudreau	Leader of the Government in the Senate
The Hon. Lyle Vanciel	Minister of Agriculture and Agri-Food
The Hon. Herb Dhaliwal	Minister of Fisheries and Oceans
The Hon. Claudette Bradshaw	Minister of Labour
The Hon. George Baker	Minister of Veterans Affairs and Secretary of State (Atlantic Canada Opportunities Agency)
The Hon. Robert Daniel Nault	Minister of Indian Affairs and Northern Development
The Hon. Maria Minna	Minister for International Cooperation
The Hon. Elinor Caplan	Minister for Citizenship and Immigration
The Hon. Ethel Blondin-Andrew	Secretary of State (Children and Youth)
The Hon. Raymond Chan	Secretary of State (Asia-Pacific)
The Hon. Hedy Fry	Secretary of State (Multiculturalism) (Status of Women)
The Hon. David Kilgour	Secretary of State (Latin America and Africa)
The Hon. James Scott Peterson	Secretary of State (International Financial Institutions)
The Hon. Ronald J. Duhamel	Secretary of State (Western Economic Diversification) and Francophonie
The Hon. Andrew Mitchell	Secretary of State (Rural Development) (Federal Economic Development Initiative for Northern Ontario)
The Hon. Gilbert Normand	Secretary of State (Science, Research and Development)
The Hon. Denis Coderre	Secretary of State (Amateur Sport)

# SENATORS OF CANADA

## ACCORDING TO SENIORITY

(April 4, 2000)

Senator	Designation	Post Office Address
THE HONOURABLE		
Herbert O. Sparrow	Saskatchewan	North Battleford, Sask.
Gildas L. Molgat, Speaker	Ste-Rose	Winnipeg, Man.
Edward M. Lawson	Vancouver	Vancouver, B.C.
Bernard Alasdair Graham, P.C.	The Highlands	Sydney, N.S.
Raymond J. Perrault, P.C.	North Shore-Burnaby	North Vancouver, B.C.
Louis-J. Robichaud, P.C.	L'Acadie-Acadia	Saint-Antoine, N.B.
Jack Austin, P.C.	Vancouver South	Vancouver, B.C.
Willie Adams	Nunavut	Rankin Inlet, Nunavut
Lowell Murray, P.C.	Pakenham	Ottawa, Ont.
C. William Doody	Harbour Main-Bell Island	St. John's, Nfld.
Peter Alan Stollery	Bloor and Yonge	Toronto, Ont.
Peter Michael Pitfield, P.C.	Ontario	Ottawa, Ont.
William McDonough Kelly	Port Severn	Mississauga, Ont.
E. Leo Kolber	Victoria	Westmount, Que.
Michael Kirby	South Shore	Halifax, N.S.
Jerahmiel S. Grafstein	Metro Toronto	Toronto, Ont.
Anne C. Cools	Toronto-York	Toronto, Ont.
Charlie Watt	Inkerman	Kuujuuaq, Que.
Daniel Phillip Hays	Calgary	Calgary, Alta.
Joyce Fairbairn, P.C.	Lethbridge	Lethbridge, Alta.
Colin Kenny	Rideau	Ottawa, Ont.
Pierre De Bané, P.C.	De la Vallière	Montreal, Que.
Eymard Georges Corbin	Grand-Sault	Grand-Sault, N.B.
Brenda Mary Robertson	Riverview	Shediac, N.B.
Jean-Maurice Simard	Edmundston	Edmundston, N.B.
Michel Cogger	Lauson	Knowlton, Que.
Norman K. Atkins	Markham	Toronto, Ont.
Ethel Cochrane	Newfoundland	Port-au-Port, Nfld.
Eileen Rossiter	Prince Edward Island	Charlottetown, P.E.I.
Mira Spivak	Manitoba	Winnipeg, Man.
Roch Bolduc	Golfe	Sainte-Foy, Que.
Gérald-A. Beaudoin	Rigaud	Hull, Que.
Pat Carney, P.C.	British Columbia	Vancouver, B.C.
Gerald J. Comeau	Nova Scotia	Church Point, N.S.
Consiglio Di Nino	Ontario	Downsview, Ont.
Donald H. Oliver	Nova Scotia	Halifax, N.S.
Noël A. Kinsella	New Brunswick	Fredericton, N.B.
John Buchanan, P.C.	Nova Scotia	Halifax, N.S.
Mabel Margaret DeWare	New Brunswick	Moncton, N.B.
John Lynch-Staunton	Grandville	Georgeville, Que.
James Francis Kelleher, P.C.	Ontario	Sault Ste. Marie, Ont.
J. Trevor Eyton	Ontario	Caledon, Ont.
Wilbert Joseph Keon	Ottawa	Ottawa, Ont.
Michael Arthur Meighen	St. Marys	Toronto, Ont.
Normand Grimard	Quebec	Noranda, Que.
Thérèse Lavoie-Roux	Quebec	Montreal, Que.
J. Michael Forrestall	Dartmouth and Eastern Shore	Dartmouth, N.S.
Janis Johnson	Winnipeg-Interlake	Winnipeg, Man.
Eric Arthur Berntson	Saskatchewan	Saskatoon, Sask.
A. Raynell Andreychuk	Regina	Regina, Sask.
Jean-Claude Rivest	Stadacona	Quebec, Que.
Terrance R. Stratton	Red River	St. Norbert, Man.



## ACCORDING TO SENIORITY

Senator	Designation	Post Office Address
THE HONOURABLE		
Marcel Prud'homme, P.C.	La Salle	Montreal, Que.
Fernand Roberge	Saurel	Ville Saint-Laurent, Que.
Leonard J. Gustafson	Saskatchewan	Macoun, Sask.
Erminie Joy Cohen	New Brunswick	Saint John, N.B.
David Tkachuk	Saskatchewan	Saskatoon, Sask.
W. David Angus	Alma	Montreal, Que.
Pierre Claude Nolin	De Salaberry	Quebec, Que.
Marjory LeBreton	Ontario	Manotick, Ont.
Gerry St. Germain, P.C.	Langley-Pemberton-Whistler	Maple Ridge, B.C.
Lise Bacon	De la Durantaye	Laval, Que.
Sharon Carstairs	Manitoba	Victoria Beach, Man.
Landon Pearson	Ontario	Ottawa, Ont.
Jean-Robert Gauthier	Ottawa-Vanier	Ottawa, Ontario
John G. Bryden	New Brunswick	Bayfield, N.B.
Rose-Marie Losier-Cool	New Brunswick	Bathurst, N.B.
Céline Hervieux-Payette, P.C.	Bedford	Montreal, Que.
William H. Rompkey, P.C.	Newfoundland	North West River, Labrador, Nfld.
Lorna Milne	Peel County	Brampton, Ont.
Marie-P. Poulin	Northern Ontario	Ottawa, Ont.
Shirley Maheu	Rougemont	Ville Saint-Laurent, Que.
Nicholas William Taylor	Sturgeon	Bon Accord, Alta.
Léonce Mercier	Mille Isles	Saint-Élie d'Orford, Que.
Wilfred P. Moore	Stanhope St./Bluenose	Chester, N.S.
Lucie Pépin	Shawinigan	Montreal, Que.
Fernand Robichaud, P.C.	New Brunswick	Saint-Louis-de-Kent, N.B.
Catherine S. Callbeck	Prince Edward Island	Central Bedeque, P.E.I.
Marisa Ferretti Barth	Repentigny	Pierrefonds, Que.
Serge Joyal, P.C.	Kennebec	Montreal, Que.
Thelma J. Chalifoux	Alberta	Morinville, Alta.
Joan Cook	Newfoundland	St. John's, Nfld.
Ross Fitzpatrick	Okanagan-Similkameen	Kelowna, B.C.
The Very Reverend Dr. Lois M. Wilson	Toronto	Toronto, Ont.
Francis William Mahovlich	Toronto	Toronto, Ont.
Calvin Woodrow Ruck	Dartmouth	Dartmouth, N.S.
Richard H. Kroft	Manitoba	Winnipeg, Man.
Douglas James Roche	Edmonton	Edmonton, Alta.
Joan Thorne Fraser	De Lorimier	Montreal, Que.
Aurélien Gill	Wellington	Mashteuiatsh, Pointe-Bleue, Que.
Vivienne Poy	Toronto	Toronto, Ont.
Sheila Finestone, P.C.	Montarville	Montreal, Que.
Ione Christensen	Yukon	Whitehorse, Yukon Territory
George Furey	Newfoundland	St. John's, Nfld.
Melvin Perry Poirier	Prince Edward Island	St. Louis, P.E.I.
Nick G. Sibbeston	Northwest Territories	Fort Simpson, N.W.T.
Isobel Finnerty	Ontario	Burlington, Ont.
J. Bernard Boudreau, P.C.	Nova Scotia	Halifax, N.S.

## SENATORS OF CANADA

## ALPHABETICAL LIST

(April 4, 2000)

Senator	Designation	Post Office Address
THE HONOURABLE		
Adams, Willie	Nunavut	Rankin Inlet, Nunavut
Andreychuk, A. Raynell	Regina	Regina, Sask.
Angus, W. David	Alma	Montreal, Que.
Atkins, Norman K.	Markham	Toronto, Ont.
Austin, Jack, P.C.	Vancouver South	Vancouver, B.C.
Bacon, Lise	De la Durantaye	Laval, Que.
Beaudoin, Gérald-A.	Rigaud	Hull, Que.
Berntson, Eric Arthur	Saskatchewan	Saskatoon, Sask.
Bolduc, Roch	Golfe	Sainte-Foy, Que.
Boudreau, J. Bernard, P.C.	Nova Scotia	Halifax, N.S.
Bryden, John G.	New Brunswick	Bayfield, N.B.
Buchanan, John, P.C.	Nova Scotia	Halifax, N.S.
Callbeck, Catherine S.	Prince Edward Island	Central Bedeque, P.E.I.
Carney, Pat, P.C.	British Columbia	Vancouver, B.C.
Carstairs, Sharon	Manitoba	Victoria Beach, Man.
Chalifoux, Thelma J.	Alberta	Morinville, Alta.
Christensen, Ione	Yukon Territory	Whitehorse, Yukon Territory
Cochrane, Ethel	Newfoundland	Port-au-Port, Nfld.
Cogger, Michel	Lauzon	Knowlton, Que.
Cohen, Erminie Joy	New Brunswick	Saint John, N.B.
Comeau, Gerald J.	Nova Scotia	Church Point, N.S.
Cook, Joan	Newfoundland	St. John's, Nfld.
Cools, Anne C.	Toronto-York	Toronto, Ont.
Corbin, Eymard Georges	Grand-Sault	Grand-Sault, N.B.
De Bané, Pierre, P.C.	De la Vallière	Montreal, Que.
DeWare, Mabel Margaret	New Brunswick	Moncton, N.B.
Di Nino, Consiglio	Ontario	Downsview, Ont.
Doody, C. William	Harbour Main-Bell Island	St. John's, Nfld.
Eyton, J. Trevor	Ontario	Caledon, Ont.
Fairbairn, Joyce, P.C.	Lethbridge	Lethbridge, Alta.
Ferretti Barth, Marisa	Repentigny	Pierrefonds, Que.
Finestone, Sheila, P.C.	Montarville	Montreal, Que.
Finnerty, Isobel	Ontario	Burlington, Ont.
Fitzpatrick, Ross	Okanagan-Similkameen	Kelowna, B.C.
Forrestall, J. Michael	Dartmouth and Eastern Shore	Dartmouth, N.S.
Fraser, Joan Thorne	De Lorimier	Montreal, Que.
Furey, George	Newfoundland	St. John's, Nfld.
Gauthier, Jean-Robert	Ottawa-Vanier	Ottawa, Ont.
Gill, Aurélien	Wellington	Mashteuiatsh, Pointe-Bleue, Que.
Grafstein, Jerahmiel S.	Metro Toronto	Toronto, Ont.
Graham, Bernard Alasdair, P.C.	The Highlands	Sydney, N.S.
Grimard, Normand	Quebec	Noranda, Que.
Gustafson Leonard J.	Saskatchewan	Macoun, Sask.
Hays, Daniel Phillip	Calgary	Calgary, Alta.
Hervieux-Payette, Céline, P.C.	Bedford	Montreal, Que.
Johnson, Janis	Winnipeg-Interlake	Winnipeg, Man.
Joyal, Serge, P.C.	Kennebec	Montreal, Que.
Kelleher, James Francis, P.C.	Ontario	Sault Ste. Marie, Ont.
Kelly, William McDonough	Port Severn	Mississauga, Ont.
Kenny, Colin	Rideau	Ottawa, Ont.
Keon, Wilbert Joseph	Ottawa	Ottawa, Ont.
Kinsella, Noël A.	New Brunswick	Fredericton, N.B.



## THE HONOURABLE

Senator	Designation	Post Office Address
Kirby, Michael	South Shore	Halifax, N.S.
Kolber, E. Leo	Victoria	Westmount, Que.
Kroft, Richard H.	Manitoba	Winnipeg, Man.
Lavoie-Roux, Thérèse	Quebec	Montreal, Que.
Lawson, Edward M.	Vancouver	Vancouver, B.C.
LeBreton, Marjory	Ontario	Manotick, Ont.
Losier-Cool, Rose-Marie	New Brunswick	Bathurst, N.B.
Lynch-Staunton, John	Grandville	Georgeville, Que.
Maheu, Shirley	Rougemont	Ville Saint-Laurent, Que.
Mahovich, Francis William	Toronto	Toronto, Ont.
Meighen, Michael Arthur	St. Marys	Toronto, Ont.
Mercier, Léonce	Mille Isles	Saint-Élie d'Orford, Que.
Milne, Lorna	Peel County	Brampton, Ont.
Molgat, Gildas L. Speaker	Ste-Rose	Winnipeg, Man.
Moore, Wilfred P.	Stanhope St./Bluenose	Chester, N.S.
Murray, Lowell, P.C.	Pakenham	Ottawa, Ont.
Nolin, Pierre Claude	De Salaberry	Quebec, Que.
Oliver, Donald H.	Nova Scotia	Halifax, N.S.
Pearson, Landon	Ontario	Ottawa, Ontario
Pépin, Lucie	Shawinigan	Montreal, Que.
Perrault, Raymond J., P.C.	North Shore-Burnaby	North Vancouver, B.C.
Perry Poirier, Melvin	Prince Edward Island	St. Louis, P.E.I.
Pitfield, Peter Michael, P.C.	Ontario	Ottawa, Ont.
Poulin, Marie-P.	Northern Ontario	Ottawa, Ont.
Poy, Vivienne	Toronto	Toronto, Ont.
Prud'homme, Marcel, P.C.	La Salle	Montreal, Que.
Rivest, Jean-Claude	Stadacona	Quebec, Que.
Roberge, Fernand	Saurel	Ville Saint-Laurent, Que.
Robertson, Brenda Mary	Riverview	Shediac, N.B.
Robichaud, Fernand, P.C.	New Brunswick	Saint-Louis-de-Kent, N.B.
Robichaud, Louis-J., P.C.	L'Acadie-Acadia	Saint-Antoine, N.B.
Roche, Douglas James	Edmonton	Edmonton, Alta.
Rompkey, William H., P.C.	Newfoundland	North West River, Labrador
Rossiter, Eileen	Prince Edward Island	Charlottetown, P.E.I.
Ruck, Calvin Woodrow	Dartmouth	Dartmouth, N.S.
St. Germain, Gerry, P.C.	Langley-Pemberton-Whistler	Maple Ridge, B.C.
Sibbeston, Nick	Northwest Territories	Fort Simpson, N.W.T.
Simard, Jean-Maurice	Edmundston	Edmundston, N.B.
Sparrow, Herbert O.	Saskatchewan	North Battleford, Sask.
Spivak, Mira	Manitoba	Winnipeg, Man.
Stollery, Peter Alan	Bloor and Yonge	Toronto, Ont.
Stratton, Terrance R.	Red River	St. Norbert, Man.
Taylor, Nicholas William	Sturgeon	Bon Accord, Alta.
Tkachuk, David	Saskatchewan	Saskatoon, Sask.
Watt, Charlie	Inkerman	Kuujuuaq, Que.
Wilson, The Very Reverend Dr. Lois M.	Toronto	Toronto, Ont.

# SENATORS OF CANADA

## BY PROVINCE AND TERRITORY

(April 4, 2000)

### ONTARIO—24

Senator	Designation	Post Office Address
THE HONOURABLE		
1 Lowell Murray, P.C.	Pakenham	Ottawa
2 Peter Alan Stollery	Bloor and Yonge	Toronto
3 Peter Michael Pitfield, P.C.	Ontario	Ottawa
4 William McDonough Kelly	Port Severn	Missassauga
5 Jerahmiel S. Grafstein	Metro Toronto	Toronto
6 Anne C. Cools	Toronto-York	Toronto
7 Colin Kenny	Rideau	Ottawa
8 Norman K. Atkins	Markham	Toronto
9 Consiglio Di Nino	Ontario	Downsview
10 James Francis Kelleher, P.C.	Ontario	Sault Ste. Marie
11 John Trevor Eyton	Ontario	Caledon
12 Wilbert Joseph Keon	Ottawa	Ottawa
13 Michael Arthur Meighen	St. Marys	Toronto
14 Marjory LeBreton	Ontario	Manotick
15 Landon Pearson	Ontario	Ottawa
16 Jean-Robert Gauthier	Ottawa-Vanier	Ottawa
17 Lorna Milne	Peel County	Brampton
18 Marie-P. Poulin	Northern Ontario	Ottawa
19 The Very Reverend Dr. Lois M. Wilson	Toronto	Toronto
20 Francis William Mahovlich	Toronto	Toronto
21 Vivienne Poy	Toronto	Toronto
22 Isobel Finnerty	Ontario	Burlington
23		
24		



## SENATORS BY PROVINCE AND TERRITORY

## QUEBEC—24

Senator	Designation	Post Office Address
THE HONOURABLE		
1 E. Leo Kolber	Victoria	Westmount
2 Charlie Watt	Inkerman	Kuuujuaq
3 Pierre De Bané, P.C.	De la Vallière	Montreal
4 Michel Cogger	Lauzon	Knowlton
5 Roch Bolduc	Golfe	Sainte-Foy
6 Gérard-A. Beaudoin	Rigaud	Hull
7 John Lynch-Staunton	Grandville	Georgeville
8 Jean-Claude Rivest	Stadacona	Quebec
9 Marcel Prud'homme, P.C.	La Salle	Montreal
10 Fernand Roberge	Saurel	Ville de Saint-Laurent
11 W. David Angus	Alma	Montreal
12 Pierre Claude Nolin	De Salaberry	Quebec
13 Lise Bacon	De la Durantaye	Laval
14 Céline Hervieux-Payette, P.C.	Bedford	Montreal
15 Shirley Maheu	Rougemont	Ville de Saint-Laurent
16 Léonce Mercier	Mille Isles	Saint-Élie d'Orford
17 Lucie Pépin	Shawinigan	Montreal
18 Marisa Ferretti Barth	Repentigny	Pierrefonds
19 Serge Joyal, P.C.	Kennebec	Montreal
20 Joan Thorne Fraser	De Lorimier	Montreal
21 Aurélien Gill	Wellington	Mashteuiatsh, Pointe-Bleue
22 Sheila Finestone, P.C.	Montarville	Montreal
23		
24		

## SENATORS BY PROVINCE—MARITIME DIVISION

## NOVA SCOTIA—10

Senator	Designation	Post Office Address
THE HONOURABLE		
1 Bernard Alasdair Graham, P.C.	The Highlands	Sydney
2 Michael Kirby	South Shore	Halifax
3 Gerald J. Comeau	Nova Scotia	Church Point
4 Donald H. Oliver	Nova Scotia	Halifax
5 John Buchanan, P.C.	Nova Scotia	Halifax
6 J. Michael Forrestall	Dartmouth and Eastern Shore	Dartmouth
7 Wilfred P. Moore	Stanhope St./Bluenose	Chester
8 Calvin Woodrow Ruck	Dartmouth	Dartmouth
9 J. Bernard Boudreau, P.C.	Nova Scotia	Halifax
10		

## NEW BRUNSWICK—10

THE HONOURABLE		
1 Louis-J. Robichaud, P.C.	L'Acadie-Acadia	Saint-Antoine
2 Eymard Georges Corbin	Grand-Sault	Grand-Sault
3 Brenda Mary Robertson	Riverview	Shediac
4 Jean-Maurice Simard	Edmundston	Edmundston
5 Noël A. Kinsella	New Brunswick	Fredericton
6 Mabel Margaret DeWare	New Brunswick	Moncton
7 Erminie Joy Cohen	New Brunswick	Saint John
8 John G. Bryden	New Brunswick	Bayfield
9 Rose-Marie Losier-Cool	New Brunswick	Bathurst
10 Fernand Robichaud, P.C.	New Brunswick	Saint-Louis-de-Kent

## PRINCE EDWARD ISLAND—4

THE HONOURABLE		
1 Eileen Rossiter	Prince Edward Island	Charlottetown
2 Catherine S. Callbeck	Prince Edward Island	Central Bedeque
3 Melvin Perry Poirier	Prince Edward Island	St. Louis
4		



## SENATORS BY PROVINCE—WESTERN DIVISION

## MANITOBA—6

Senator	Designation	Post Office Address
THE HONOURABLE		
1 Gildas L. Molgat, Speaker	Ste-Rose	Winnipeg
2 Mira Spivak	Manitoba	Winnipeg
3 Janis Johnson	Winnipeg-Interlake	Winnipeg
4 Terrance R. Stratton	Red River	St. Norbert
5 Sharon Carstairs	Manitoba	Victoria Beach
6 Richard H. Kroft	Manitoba	Winnipeg

## BRITISH COLUMBIA—6

THE HONOURABLE		
1 Edward M. Lawson	Vancouver	Vancouver
2 Raymond J. Perrault, P.C.	North Shore-Burnaby	North Vancouver
3 Jack Austin, P.C.	Vancouver South	Vancouver
4 Pat Carney, P.C.	British Columbia	Vancouver
5 Gerry St. Germain, P.C.	Langley-Pemberton-Whistler	Maple Ridge
6 Ross Fitzpatrick	Okanagan-Similkameen	Kamloops

## SASKATCHEWAN—6

THE HONOURABLE		
1 Herbert O. Sparrow	Saskatchewan	North Battleford
2 Eric Arthur Berntson	Saskatchewan	Saskatoon
3 A. Raynell Andreychuk	Regina	Regina
4 Leonard J. Gustafson	Saskatchewan	Macoun
5 David Tkachuk	Saskatchewan	Saskatoon
6		

## ALBERTA—6

THE HONOURABLE		
1 Daniel Phillip Hays	Calgary	Calgary
2 Joyce Fairbairn, P.C.	Lethbridge	Lethbridge
3 Nicholas William Taylor	Sturgeon	Bon Accord
4 Thelma J. Chalifoux	Alberta	Morinville
5 Douglas James Roche	Edmonton	Edmonton
6		

## SENATORS BY PROVINCE AND TERRITORY

## NEWFOUNDLAND—6

Senator	Designation	Post Office Address
THE HONOURABLE		
1 C. William Doody .....	Harbour Main-Bell Island ....	St. John's
2 Ethel Cochrane .....	Newfoundland .....	Port-au-Port
3 William H. Rompkey, P.C. ....	Newfoundland .....	North West River, Labrador
4 Joan Cook .....	Newfoundland .....	St. John's
5 George Furey .....	Newfoundland .....	St. John's
6 .....		

## NORTHWEST TERRITORIES—1

THE HONOURABLE		
1 Nick G. Sibbeston .....	Northwest Territories .....	Fort Simpson

## NUNAVUT—1

THE HONOURABLE		
1 Willie Adams .....	Nunavut .....	Rankin Inlet

## YUKON TERRITORY—1

THE HONOURABLE		
1 Ione Christensen .....	Yukon Territory .....	Whitehorse



---

**DIVISIONAL SENATORS**

---

Senator

Designation

Post Office Address

---

THE HONOURABLE

---

- |   |                           |              |                |
|---|---------------------------|--------------|----------------|
| 1 | Normand Grimard .....     | Quebec ..... | Noranda, Que.  |
| 2 | Thérèse Lavoie-Roux ..... | Quebec ..... | Montreal, Que. |
-

## ALPHABETICAL LIST OF STANDING, SPECIAL AND JOINT COMMITTEES

(As of April 4, 2000)

\*Ex Officio Member

### ABORIGINAL PEOPLES

<b>Chair:</b>	<b>Honourable Senator Austin</b>	<b>Deputy Chair:</b>	<b>Honourable Senator St. Germain</b>
<b>Honourable Senators:</b>			
Andreychuk,	Chalifoux,	*Lynch-Staunton,	Sibbeston,
		(or Kinsella)	
Austin,	Christensen,		St. Germain,
*Boudreau,	DeWare,	Nolin,	Tkachuk.
(or Hays)	Gill,	Pearson,	

#### *Original Members as nominated by the Committee of Selection*

*Andreychuk, Austin, Beaudoin, \*Boudreau (or Hays), Chalifoux, Christensen, Comeau, DeWare, Gill, Johnson  
\*Lynch-Staunton (or Kinsella), Pearson, Sibbeston, Watt.*

---

### AGRICULTURE AND FORESTRY

<b>Chair:</b>	<b>Honourable Senator Gustafson</b>	<b>Deputy Chair:</b>	<b>Honourable Senator Fairbairn</b>
<b>Honourable Senators:</b>			
*Boudreau,	Fitzpatrick,	Oliver,	Rossiter,
(or Hays)	Gill,	Perry,	Sparrow,
Carstairs,	Gustafson,	Robichaud,	St. Germain,
Chalifoux,	*Lynch-Staunton,	(Saint-Louis-de-Kent)	Stratton.
	(or Kinsella)		

#### *Original Members as nominated by the Committee of Selection*

*\*Boudreau (or Hays), Chalifoux, Fairbairn, Fitzpatrick, Ferretti Barth, Gill, Gustafson, \*Lynch-Staunton (or Kinsella),  
Oliver, Robichaud (Saint-Louis-de-Kent), Sparrow, Spivak, St. Germain, Stratton.*

---

### THE SUBCOMMITTEE ON FORESTRY

(Agriculture and Forestry)

<b>Chair:</b>	<b>Honourable Senator Fitzpatrick</b>	<b>Deputy Chair:</b>	<b>Honourable Senator St. Germain</b>
<b>Honourable Senators:</b>			
*Boudreau,	Fitzpatrick,	*Lynch-Staunton,	St. Germain,
(or Hays)	Gill,	(or Kinsella)	Stratton.
Chalifoux,			

---



**BANKING, TRADE AND COMMERCE**

**Chair:** Honourable Senator Kolber  
**Honourable Senators:**

Angus, Furey,  
 \*Boudreau Hervieux-Payette,  
 (or Hays) Kelleher,  
 Fitzpatrick, Kenny,

**Deputy Chair:** Honourable Senator Tkachuk

Kolber, Meighen,  
 Kroft, Oliver,  
 \*Lynch-Staunton, Tkachuk,  
 (or Kinsella)

*Original Members as nominated by the Committee of Selection*

Angus, \*Boudreau (or Hays), Fitzpatrick, Furey, Hervieux-Payette, Joyal, Kelleher, Kenny, Kolber,  
 \*Lynch-Staunton (or Kinsella), Meighen, Oliver, Tkachuk.

**ENERGY, THE ENVIRONMENT AND NATURAL RESOURCES**

**Chair:** Honourable Senator Spivak  
**Honourable Senators:**

Adams, Christensen,  
 \*Boudreau, Cochrane,  
 (or Hays) Eyton,  
 Buchanan, Finnerty,  
 Chalifoux,

**Deputy Chair:** Honourable Senator Taylor

Kelleher, Spivak,  
 Kenny, Taylor,  
 \*Lynch-Staunton,  
 (or Kinsella)  
 Sibbeston,

*Original Members as nominated by the Committee of Selection*

Adams, \*Boudreau (or Hays), Buchanan, Chalifoux, Christensen, Cochrane, Eyton, Furey,  
 Kenny, \*Lynch-Staunton (or Kinsella), Sibbeston, Spivak, St. Germain, Taylor.

**FISHERIES**

**Chair:** Honourable Senator Comeau  
**Honourable Senators:**

\*Boudreau, Cook,  
 (or Hays) Furey,  
 Carney Johnson,  
 Comeau, \*Lynch-Staunton,  
 (or Kinsella)

**Deputy Chair:** Honourable Senator Perrault

Mahovlich, Perry,  
 Meighen, Robertson,  
 Perrault, Robichaud,  
 (Saint-Louis-de-Kent)  
 Watt.

*Original Members as nominated by the Committee of Selection*

\*Boudreau (or Hays), Carney, Comeau, Cook, Doody, Furey, \*Lynch-Staunton (or Kinsella), Mahovlich,  
 Meighen, Murray, Perrault, Perry, Robichaud (Saint-Louis-de-Kent), Watt.

## FOREIGN AFFAIRS

Chair: Honourable Senator Stollery

Honourable Senators:

Andreychuk,	Carney,
Atkins,	Corbin,
Bolduc,	De Bané,
*Boudreau, (or Hays)	

Deputy Chair: Honourable Senator Andreychuk

Di Nino,	Poy,
Finnerty,	Stollery,
Grafstein,	Taylor,
*Lynch-Staunton, (or Kinsella)	

*Original Members as nominated by the Committee of Selection*

*Andreychuk, Atkins, Bolduc, \*Boudreau (or Hays), Corbin, Carney, De Bané, Di Nino, Grafstein, Lewis, Losier-Cool, \*Lynch-Staunton (or Kinsella), Stewart, Stollery.*

## INTERNAL ECONOMY, BUDGETS AND ADMINISTRATION

Chair: Honourable Senator Rompkey

Honourable Senators:

*Boudreau (or Hays)	DeWare,
	Forrestall,
Cohen,	Kelly,
Comeau,	Kenny,
De Bané,	Kroft,

Deputy Chair: Honourable Senator Nolin

*Lynch-Staunton, (or Kinsella)	Poulin,
	Robichaud, (Saint-Louis-de-Kent)
Maheu,	
Milne,	Rompkey,
Nolin,	Stollery,

*Original Members as nominated by the Committee of Selection*

*\*Boudreau (or Hays), Cohen, De Bané, DeWare, Forrestall, Kelly, Kenny, Kroft, \*Lynch-Staunton (or Kinsella), Maheu, Milne, Nolin, Poulin, Robichaud (Saint-Louis-de-Kent), Rompkey, Rossiter, Stollery.*

## LEGAL AND CONSTITUTIONAL AFFAIRS

Chair: Honourable Senator Milne

Honourable Senators:

Andreychuk,	Cools,
Beaudoin,	Fraser,
Buchanan,	Ghitter,
*Boudreau (or Hays),	

Deputy Chair: Honourable Senator Beaudoin

Joyal,	Moore,
*Lynch-Staunton, (or Kinsella)	Nolin,
	Pearson,
Milne,	Poy,

*Original Members as nominated by the Committee of Selection*

*Andreychuk, Beaudoin, \*Boudreau (or Hays), Cools, Fraser, Ghitter, Joyal, Kelleher, \*Lynch-Staunton (or Kinsella), Milne, Moore, Nolin, Pearson, Poy.*



## LIBRARY OF PARLIAMENT (Joint)

**Joint Chair:** Honourable Senator Louis Robichaud  
**Honourable Senators:**

Atkins, Grafstein,  
 Finnerty, Grimard,

**Deputy Chair:**

Poy, Robichaud,  
 (L'Acadie-Acadia)  
 Ruck.

*Original Members agreed to by Motion of the Senate*  
*Atkins, Finnerty, Grafstein, Poy, Robichaud (L'Acadie-Acadia), Ruck.*

---

## NATIONAL FINANCE

**Chair:** Honourable Senator Murray  
**Honourable Senators:**

Bolduc, Doody,  
 \*Boudreau, Finestone,  
 (or Hays) Finnerty,  
 Cools, Ferretti Barth.

**Deputy Chair:** Honourable Senator Cools

Kinsella, Moore,  
 \*Lynch-Staunton, Murray,  
 (or Kinsella) Stratton.  
 Mahovlich,

*Original Members as nominated by the Committee of Selection*  
*Bolduc, \*Boudreau (or Hays), Cools, Finestone, Finnerty, Ferretti Barth, Kinsella,*  
*\*Lynch-Staunton (or Kinsella), Mahovlich, Moore, Murray, Perry, Stratton.*

---

## OFFICIAL LANGUAGES (Joint)

**Joint Chair:** Honourable Senator Losier-Cool  
**Honourable Senators:**

Beaudoin, Gauthier,  
 Fraser,

**Deputy Chair:**

Losier-Cool, Rivest,  
 Robichaud,  
 (L'Acadie-Acadia)

*Original Members agreed to by Motion of the Senate*  
*Beaudoin, Fraser, Gauthier, Losier-Cool, Meighen, Pépin, Rivest, Robichaud (L'Acadie-Acadia).*

---

### PRIVILEGES, STANDING RULES AND ORDERS

**Chair:** Honourable Senator Austin  
**Honourable Senators:**

Austin,	DeWare,
Beaudoin,	Di Nino,
*Boudreau, (or Hays)	Gauthier,
Corbin,	Grafstein,
	Grimard,

**Deputy Chair:** Honourable Senator Grimard

Joyal,	*Lynch-Staunton, (or Kinsella)
Kelly,	Robichaud, (L'Acadie-Acadia).
Kroft,	
Losier-Cool,	Rossiter.

*Original Members as nominated by the Committee of Selection*

*Austin, Bacon, Beaudoin, \*Boudreau (or Hays), DeWare, Gauthier, Ghitter, Grafstein, Grimard, Joyal, Kelly, Kroft, \*Lynch-Staunton (or Kinsella), Maheu, Pépin, Robichaud (L'Acadie-Acadia), Rossiter.*

---

### SCRUTINY OF REGULATIONS (Joint)

**Joint Chair:** Honourable Senator Hervieux-Payette  
**Honourable Senators:**

Cochrane,	Grimard,
Finestone,	

**Deputy Chair:**

Hervieux-Payette,	Moore,
	Rivest.

*Original Members as nominated by the Committee of Selection*

*Cochrane, Finestone, Furey, Grimard, Hervieux-Payette, Moore, Perry, Rivest.*

---

### SELECTION

**Chair:** Honourable Senator Mercier  
**Honourable Senators:**

Atkins,	DeWare,
Austin,	Fairbairn,
*Boudreau, (or Hays)	Grafstein,

**Deputy Chair:**

Kinsella,	Mercier,
Kirby,	Murray.
*Lynch-Staunton, (or Kinsella)	

*Original Members agreed to by Motion of the Senate*

*Atkins, Austin, \*Boudreau (or Hays), DeWare, Fairbairn, Grafstein, Kinsella, Kirby, \*Lynch-Staunton or (Kinsella), Mercier, Murray.*

---



### SOCIAL AFFAIRS, SCIENCE AND TECHNOLOGY

<b>Chair:</b>	<b>Honourable Senator Kirby</b>	<b>Deputy Chair:</b>	<b>Honourable Senator LeBreton</b>
<b>Honourable Senators:</b>			
Beaudoin,	Cohen,	Gill,	*Lynch-Staunton, (or Kinsella)
*Boudreau, (or Hays)	Cook,	Keon,	Milne,
Carstairs,	Corbin,	Kirby,	Roberston.
	Fairbairn,	LeBreton,	

*Original Members as nominated by the Committee of Selection*

*\*Boudreau (or Hays), Callbeck, Carstairs, Cohen, Cook, Di Nino, Fairbairn, Gill, Kirby,  
Lavoie-Roux, LeBreton, \*Lynch-Staunton (or Kinsella), Pépin, Robertson.*

### THE SUBCOMMITTEE TO UPDATE "OF LIFE AND DEATH" (Social Affairs, Science and Technology)

<b>Chair:</b>	<b>Honourable Senator Carstairs</b>	<b>Deputy Chair:</b>	<b>Honourable Senator Beaudoin</b>
<b>Honourable Senators:</b>			
Beaudoin,	Carstairs,	Keon,	Milne.
*Boudreau, (or Hays)	Corbin,	*Lynch-Staunton, (or Kinsella)	

### TRANSPORT AND COMMUNICATIONS

<b>Chair:</b>	<b>Honourable Senator Bacon</b>	<b>Deputy Chair:</b>	<b>Honourable Senator Forrestall</b>
<b>Honourable Senators:</b>			
Adams,	Callbeck,	Kirby,	Perrault,
Bacon,	Finestone,	LeBreton,	Poulin,
*Boudreau, (or Hays)	Forrestall,	*Lynch-Staunton, (or Kinsella)	Roberge,
	Johnson,		Spivak.

*Original Members as nominated by the Committee of Selection*

*Adams, Bacon, \*Boudreau (or Hays), Callbeck, Finestone, Forrestall, Johnson, Kirby,  
LeBreton, \*Lynch-Staunton (or Kinsella), Perrault, Poulin, Roberge, Spivak.*

**THE SUBCOMMITTEE ON COMMUNICATIONS**  
**(Transport and Communications)**

**Chair: Honourable Senator Poulin**

**Honourable Senators:**

\*Boudreau,  
(or Hays)

Finestone,  
Johnson,

**Deputy Chair: Honourable Senator Spivak**

Kirby,

Poulin,

\*Lynch-Staunton,  
(or Kinsella)

Spivak.

---

# CONTENTS

Tuesday, April 4, 2000

PAGE

PAGE

## SENATORS' STATEMENTS

<b>Prime Minister of Japan</b>	
Condolences and Wishes of Early Recovery from Sudden Illness. Senator Hays .....	923
<b>Plight of Street Children</b>	
Senator Carstairs .....	923
<b>Senegal</b>	
New Government. The Hon. the Speaker .....	923
<b>Cancer Awareness Month</b>	
Senator DeWare .....	924
<b>Taiwan</b>	
New Government. Senator Di Nino .....	924

## ROUTINE PROCEEDINGS

<b>Internal Economy, Budgets and Administration</b>	
Seventh Report of Committee Presented. Senator Nolin .....	924
<b>Scrutiny of Regulations</b>	
Second Report of Joint Committee presented Senator Hervieux-Payette .....	925

## QUESTION PERIOD

<b>Delayed Answers to Oral Questions</b>	
Senator Hays .....	925
<b>Agriculture and Agri-Food</b>	
Farm Crisis in Prairie Provinces—Flooding Problem in Manitoba and Saskatchewan—Request for Response. Question by Senator Stratton. Senator Hays (Delayed Answer) .....	925
<b>Environment</b>	
Residency Requirement for Job Applicants. Question by Senator Atkins. Senator Hays (Delayed Answer) .....	926
<b>Export Development Canada</b>	
China—Influence of Environmental Policy in Granting of Funds to Three Gorges Dam Project. Question by Senator Andreychuk. Senator Hays (Delayed Answer) .....	926
<b>National Defence</b>	
Sea King Helicopters—Level of Flight Training for Pilots. Question by Senator Forrestall Senator Hays (Delayed Answer) .....	926

## ORDERS OF THE DAY

<b>Nisga'a Final Agreement Bill (Bill C-9)</b>	
Third Reading—Debate Continued.	
Senator Austin .....	927
Senator St. Germain .....	928
Senator Murray .....	928
Senator Comeau .....	929
Senator Andreychuk .....	931
Senator Lynch-Staunton .....	932
Senator Cools .....	934
Senator Kinsella .....	934
Senator Beaudoin .....	935
Senator Grafstein .....	935
Motion in Amendment. Senator St. Germain .....	940
Senator Grafstein .....	940
Senator Austin .....	941
Senator Hays .....	942
Senator Beaudoin .....	942

<b>Bill to Give Effect to the Requirement for Clarity as Set Out in the Opinion of the Supreme Court of Canada in the Quebec Secession Reference (Bill C-20)</b>	
Second Reading—Debate Continued. Senator Kinsella .....	942
Senator Boudreau .....	949
Senator Graham .....	951
Senator Fraser .....	951
Senator Beaudoin .....	952
Senator Grafstein .....	952
Senator Bryden .....	952

<b>Business of the Senate</b>	
Senator Hays .....	953

<b>Fisheries</b>	
Committee Authorized to Meet During Sitting of the Senate. Senator Hays .....	953

<b>Marine Liability Bill (Bill S-17)</b>	
Second Reading. Senator Angus .....	953
Senator Furey .....	956
Referred to Committee. ....	956

<b>National Defence Act (Bill S-18)</b>	
Bill to Amend—Second Reading. Senator Meighen .....	956
Referred to Committee. ....	957

<b>Canadian Institutes of Health Research Bill (Bill C-13)</b>	
Second Reading. Senator Carstairs .....	957
Senator Keon .....	960
Referred to Committee. ....	961

<b>Payments in Lieu of Taxes Bill (Bill C-10)</b>	
Second Reading—Debate Adjourned. Senator Moore .....	961

<b>Canada Business Corporations Act</b>	
<b>Canada Cooperatives Act (Bill S-19)</b>	
Bill to Amend—Second Reading—Debate Continued. Senator Hays .....	963



	PAGE		PAGE
Senator Wilson .....	963	Senator Kinsella .....	965
<b>Financing of Post-Secondary Education</b>		Senator Corbin .....	965
Inquiry—Debate Continued, Senator Callbeck .....	964	Senator Wilson .....	970
Senator Atkins .....	965	<b>Sudan</b>	
<b>Religious Freedom in China in Relation to</b>		Inquiry—Debate Adjourned, Senator Wilson .....	970
<b>United Nations International Covenants</b>		<b>Adjournment</b>	
Inquiry—Debate Continued, Senator Andreychuk .....	966	Senator Hays .....	970
Senator Hays .....	969	<b>Appendix</b> .....	





*If undelivered, return COVER ONLY to:*  
Public Works and Government Services Canada —  
Publishing  
45 Sacré-Coeur Boulevard,  
Hull, Québec, Canada K1A 0S9





CANADA

# Debates of the Senate

2nd SESSION

• 36th PARLIAMENT

• VOLUME 138

• NUMBER 43

OFFICIAL REPORT  
(HANSARD)

Wednesday, April 5, 2000

—  
THE HONOURABLE GILDAS L. MOLGAT  
SPEAKER



## CONTENTS

(Daily index of proceedings appears at back of this issue.)

*Debates*: Chambers Building, Room 943, Tel. 996-0193

---

Published by the Senate

Available from Canada Communication Group — Publishing, Public Works and  
Government Services Canada, Ottawa K1A 0S9,

Also available on the Internet: <http://www.parl.gc.ca>

## THE SENATE

Wednesday, April 5, 2000

The Senate met at 1:30 p.m., the Speaker in the Chair.

Prayers.

### ROUTINE PROCEEDINGS

#### CHANGING MANDATE OF THE NORTH ATLANTIC TREATY ORGANIZATION

REPORT OF FOREIGN AFFAIRS COMMITTEE ON STUDY TABLED

**Hon. Peter A. Stollery:** Honourable senators, I have the honour to table the seventh report of the Standing Senate Committee on Foreign Affairs, which deals with the examination of the ramifications to Canada of the changed mandate of the North Atlantic Treaty Organization (NATO) and Canada's role in NATO, and of peacekeeping with particular reference to Canada's ability to participate in it.

Honourable senators, pursuant to rule 97(3), I move that the report be placed on the Orders of the Day for consideration at the next sitting of the Senate.

**The Hon. the Speaker:** Is it your pleasure, honourable senators, to adopt the motion?

**Hon. Senators:** Agreed.

Motion agreed to and report placed on the Orders of the Day for consideration at the next sitting of the Senate.

#### TOBACCO YOUTH PROTECTION BILL

FIRST READING

**Hon. Colin Kenny** presented Bill S-20, to enable and assist the Canadian tobacco industry in attaining its objective of preventing the use of tobacco products by young persons in Canada.

Bill read first time.

**The Hon. the Speaker:** Honourable senators, when shall this bill be read the second time?

• (1340)

On motion of Senator Kenny, bill placed on the Orders of the Day for second reading Friday, April 7, 2000.

### NATIONAL DEFENCE

NEED TO JOIN WITH UNITED STATES  
IN MISSILE DEFENCE PROGRAM—NOTICE OF INQUIRY

**Hon. J. Michael Forrestall:** Honourable senators, I give notice that on Wednesday next, April 12, 2000, I will call the attention of the Senate to the need for Canada to join the United States in national missile defence.

### QUESTION PERIOD

#### UNITED NATIONS

KOSOVO—RESOLUTION ON RETURN OF SERBIAN FORCE—  
GOVERNMENT POLICY

**Hon. J. Michael Forrestall:** Honourable senators, I had a question I wanted to put several weeks ago concerning the attempted assassination in Yugoslavia of the Secretary-General of NATO and the NATO commander who were going to that troubled part of the world to mark the anniversary of the NATO intervention by air bombing. It is remarkable that there has been no great reaction from NATO officials, from the United States or from anyone else, for that matter. If someone were setting out to kill our leader, Mr. Chrétien, I would want to know, with mixed emotions perhaps, who it was, what was going on and what we were doing to ensure that it did not happen again.

More important, in the text of the UN resolution on Kosovo, point 6 of Annex 2 allows for the return of Yugoslav forces for liaison, clearing mine fields, protection of Serbian cultural sites and border patrol. Considering their past unrepentant history in Kosovo, and considering their repression in Montenegro, and considering these allegations of assassination, does Canada continue to support the return of Yugoslav forces to that part of the world for any purpose whatsoever?

**Hon. J. Bernard Boudreau (Leader of the Government):** Honourable senators, with respect to the incidents involving death threats to certain prominent officials, I can only indicate that all due precautions were taken. Having in a past life been the subject of similar types of threats, probably the less publicity that one receives, the better off one is.

With respect to the role of the Serbian forces, I am unaware of recent developments with respect to the position of the Department of National Defence regarding that matter. However, I can assure the honourable senator that any participation by Serbian forces will be very limited, very specific, and highly monitored.



**Senator Forrestall:** I appreciate that reply. Might I ask the minister to report back at his convenience with as close to a yes or no response as is possible as to whether we continue to support the return of Serbian troops to that area for those purposes? There are humanitarian reasons such as family reunification. There are a lot of events taking place that would tend to qualify that question, but as a general answer, I would be grateful for a yes or no answer.

**Senator Boudreau:** I will certainly attempt to get the honourable senator as specific a response as possible. Obviously, there may be qualifications with respect to what type of role the Serbian forces will play, but I will seek the answer and bring it to him, perhaps as early as tomorrow.

## AGRICULTURE AND AGRI-FOOD

### FARM CRISIS IN PRAIRIE PROVINCES—SUPPORT FUNDING TO FARMERS—DEMANDS OF BANKS

**Hon. Leonard J. Gustafson:** Honourable senators, I have a question for the Leader of the Government in the Senate with regard to the support funding to farmers that has been accounted. Most farmers have not received any money yet. However, what the farmers are receiving today are registered letters from the Farm Credit Corporation, their bankers, or their credit unions advising them that if they do receive any money, the institution wants its money first. By way of example, if a farmer owing \$15,000 receives \$8,000, the bank, the credit union or some other financial institution will want their take of that money first. This will not help farmers get their crops in the ground when they are looking at seeding in the near future.

Is the government aware of what is happening down on the farms where farmers are facing crisis?

**Hon. J. Bernard Boudreau (Leader of the Government):** Honourable senators, I do not know how widespread the practice is that the honourable senator describes and whether it extends across one or more provinces. Nevertheless, one would have to believe that, unless the banks and financial institutions intend to get into the farming business in a big way, they would take a more long-term view. As the honourable senator has pointed out, the assistance is designed to allow farmers to put crops into the ground, and that when they reap the benefit of their labours over this summer and fall, they will be in a far better possession to deal with their financial institution.

The honourable senator makes a telling point. I will undertake to raise his inquiries specifically with the Minister of Agriculture. I will attempt to find out how widespread this practice is, whether it is just one financial institution and a handful of farmers, or whether it is a general policy that has been decided upon. On the part of the financial institutions, however, that practice would be very short-sighted.

**Senator Gustafson:** In fact, honourable senators, this practice is very general. Any farmer, for instance, who takes a cash advance from the Canadian Wheat Board must go to his banker first and get the papers signed confirming that the money will come through that bank or credit institution before he receives it. He has already signed up. That goes for every farmer who takes a cash advance. The same thing is true with payments from the government.

My question is: Is the government prepared to lead the way in dealing with the financial institutions and, in particular, with the Farm Credit Corporation? Farmers have come to me and said, "We have received registered letters. We only owe \$15,000 or smaller amounts of money on a payment on the land". Surely, some kind of program of relief in this crisis period for farmers could be worked out by the government with the financial institutions until we see better days in the grain industry.

**Senator Boudreau:** I understand the nature of the honourable senator's concern. I will raise it with the Minister of Agriculture, as I have indicated.

I believe all senators would hope that the financial institutions will understand the nature of the situation and come to the table with help and consideration for precisely the circumstances that the farmers across Western Canada find themselves in. In addition to that general statement, let me also assure the honourable senator that I will raise his concerns with the Minister of Agriculture.

• (1350)

### FARM CRISIS IN PRAIRIE PROVINCES—FARM CREDIT CORPORATION—EFFECT OF SUPPORT FUNDING TO FARMERS

**Hon. A. Raynell Andreychuk:** Honourable senators, I have a supplementary question for the Leader of the Government in the Senate on the same topic.

The view of the Farm Credit Corporation before the government announcement was that if they were to do anything for farmers in crisis, they would be prejudicing those who had overcome their own crises. They were trying to say that they were being even-handed in the situation. When I contacted the director of the corporation, I pointed out to him that everyone has a different crisis because of their own family structure and their own business structure.

It is increasingly important that the government stress to the Farm Credit Corporation that it is a changed situation in that there is at least some assured payment forthcoming. Previously, the corporation was telling farmers that they had to inform the corporation that they had resources forthcoming. It was taking 18 months to fill out the forms.

Is there some assurance that the government has met with officials of the Farm Credit Corporation to ensure that they are changing their policies to take into account these payments?

**Hon. J. Bernard Boudreau (Leader of the Government):**

Honourable senators, my honourable friend is correct in saying that the circumstances have changed for farmers who may now be in that situation. Specifically, they have changed because governments have taken action to allow farmers to get this year's crop in the ground. That will surely have a dramatic effect on their credit situation.

I take these questions seriously. I will raise this issue with the Minister of Agriculture to determine how widespread the practices are and to find out to what extent the minister is aware of them and what action he is taking.

FARM CRISIS IN PRAIRIE PROVINCES—  
FLOODING PROBLEM IN MANITOBA AND SASKATCHEWAN

**Hon. Terry Stratton:** Honourable senators, last week I asked the Leader of the Government in the Senate about the plight of farmers in southwestern Manitoba and southeastern Saskatchewan. At that time, he told me he would reply to my question of February 16. Perhaps my question was not clear enough or put appropriately enough when I asked it. Having read the response to the question, does the government deem that to be an appropriate response to those farmers? Is it adequate? Is it the final position of the government with respect to those farmers?

**Hon. J. Bernard Boudreau (Leader of the Government):** Honourable senators, I am sure that the Minister of Agriculture is aware of the situation to which the honourable senator refers and continues to monitor it on an ongoing basis. The response that I tabled and subsequently discussed in this chamber is the current position of the Minister of Agriculture.

**Senator Stratton:** Honourable senators, we always sit and wonder if we are waiting for an election before something concrete happens.

A group of us met yesterday with five farmers who were in town to meet with the Minister of Agriculture. We asked the same question of these five farmers because four of them were from the province of Manitoba. We asked if they felt that the relief for flooded-out farmers was adequate to the extent that they will have enough money for spring planting. The unanimous response was no. I know that what I am relating to the minister is hearsay. Nevertheless, we were told that small towns and villages are now feeling the impact. Companies and businesses in rural areas are closing down. We are faced with a real crisis in these rural areas. Yet, there is no long-term relief and no cash advances for farmers to put grain in the ground. These folks are forecasting that one-third of them will lose their family farms.

Surely to goodness, if we are not waiting for an election, the government could come up with some kind of long-term response and cash advance so that these farmers can get their grain planted this spring. They do not have the money to do that now.

**Senator Boudreau:** Honourable senators, as Senator Stratton points out, these individuals have had a chance to meet directly

with the Minister of Agriculture and, no doubt, have brought him up to date on their situation. It does not surprise me that in their view any assistance, including the assistance I mentioned in earlier responses, is not adequate. It is a situation that the Minister of Agriculture continues to monitor. No doubt, he will have received up-to-date information from those individuals with whom he met. Hopefully, he will act on the situation, taking all factors into account.

**Senator Stratton:** Honourable senators, I hope the minister recognizes that I will be asking this type of question on a fairly regular basis until I receive a response that will help these folks. I will continue to do this until I hear them say, "All right, senator, we are fine; we will survive." They are just asking to survive, not to live well.

**Senator Boudreau:** Honourable senators, I recognize that fact. I acknowledge the honourable senator's concern for the people in that area of the country and the difficulties and the challenges they face. I appreciate, as well, that this will continue to be a matter of concern for the honourable senator.

In view of the honourable senator's information that some farmers met as recently as yesterday with the Minister of Agriculture, I will have an opportunity to be updated. Given those recent meetings, I will arrange to meet with the Minister of Agriculture again to see what his current position is, and whether his position has changed as a result of those conversations. I will undertake to do that before the end of the week.

## UNITED NATIONS

### CHINA—RESOLUTION ON HUMAN RIGHTS— GOVERNMENT POLICY

**Hon. A. Raynell Andreychuk:** Honourable senators, last night I took the kind and generous time of the Senate to talk about the human rights issue in China. Several individuals in Canada, including Mr. Cotler of the other place and Mr. Warren Allmand of the International Centre for Human Rights and Democratic Development in Montreal, have pointed out that the record of the Chinese concerning religious intolerance has worsened. It is probably worse than it has been in 10 years. I do not presume to go over my speech again.

Honourable senators, will the Government of Canada support the resolution in the United Nations Commission on Human Rights, which is not a condemning resolution, but a resolution expressing concern for the situation in China? It pleads with China to look again at this issue.

**Hon. J. Bernard Boudreau (Leader of the Government):** Honourable senators, the most recent information I have is that President Clinton has indicated that the United States will sponsor the resolution on China at the annual meeting of the United Nations Commission on Human Rights to be held this spring in Geneva.



The latest information I have is that Canada is considering its position on this resolution seriously. It is in the process of consulting with other like-minded countries. Clearly, our viewpoint is beyond doubt. We condemn any restrictions on religious freedoms, indeed, any human rights violations in any country, including China. We will be announcing a decision on that situation in the near future.

My most recent information indicates that the process is ongoing and that the department and, indeed, the Minister of Foreign Affairs have not formally made an announcement on Canada's position.

**Senator Andreychuk:** Honourable senators, the minister used the term "like-minded countries" in his response. Traditionally, like-minded countries included Sweden, Norway, Denmark, the Netherlands and, perhaps, the United Kingdom and Australia. What happened previously on the Chinese resolution was that the European Community appeared to want to speak with one voice. Certain countries within the European Community refused to have this issue brought forward because they thought their trade would be jeopardized. Unfortunately, Canada fell into that category the last time, and the resolution did not proceed.

• (1400)

Will the Leader of the Government in the Senate assure us that when we refer to like-minded countries, we are referring to countries that are concerned about human rights issues and trade issues equally? If the U.S. resolution does not sit well with like-minded countries or with the Government of Canada, would the government consider putting forward its own facilitating resolution?

**Senator Boudreau:** Honourable senators, I do not wish to speculate on what the minister or the government might do in a given, hypothetical situation. However, I fully concur that when we speak of like-minded countries, we speak of consulting with countries that are as concerned as are we about religious freedom and human rights around the world. This serious resolution will come forward. It is one that we will undoubtedly need to address as a country.

The best information I have from the Minister of Foreign Affairs is that we are still going through a consulting process. We are speaking with countries that will also be faced with the decision of how they will vote and what actions they will take. I am sure that before the date of the resolution, the Minister of Foreign Affairs will make clear Canada's position and give reasons for his decision.

#### SANCTIONS AGAINST IRAQ—GOVERNMENT POLICY

**Hon. Douglas Roche:** Honourable senators, I have a question for the Leader of the Government in the Senate.

Canada has assumed, for the month of April, the presidency of the United Nations Security Council, which is both an honour

and an obligation for our country. One of the biggest issues dividing the UN Security Council now is the question of the maintenance of sanctions against Iraq. As a result of sanctions for the better part of a decade, approximately 500,000 children have died. This week, Foreign Affairs Minister Axworthy said that Canada would sponsor a debate in the UN Security Council on this very issue.

Can the minister tell us what the position of Canada is with respect to the maintenance of sanctions? Has the time come to end these sanctions that are having such a terrible effect on innocent people, especially children, in Iraq? Can this be done in a way that will preserve the UN's right to examination the question of disarmament in Iraq?

**Hon. J. Bernard Boudreau (Leader of the Government):** Honourable senators, in his question, my honourable friend has illustrated the balance that must be struck with respect to any action in this area. I have not had specific conversations with the Minister of Foreign Affairs regarding Canada's position on that debate, but I can say with some confidence that the minister and the government obviously feel this issue should be revisited. The issues will be very much the ones that the honourable senator raises, namely, whether the response of the international community through the UN can be changed without sacrificing other avenues of activity.

The honourable senator asks what our position will be in the debate. I cannot respond specifically to that question today, except to indicate that it would appear the minister clearly has given the signal that this issue should be revisited.

#### REPORT OF SECRETARY-GENERAL— REQUEST FOR DISTRIBUTION TO PARLIAMENTARIANS

**Hon. Douglas Roche:** Honourable senators, I thank the minister for that answer. I hope that he will carry forward to the Foreign Affairs Minister the representations from at least myself and probably many others in the Senate — although I am speaking only for myself — that the time has come to lift those sanctions against Iraq.

This week, the Secretary-General of the United Nations, Kofi Annan, published a remarkable report entitled "We the Peoples", referring to the first words of the UN Charter. This report sets out a course for the United Nations for the millennium and will be at the heart of the summit of world leaders at the United Nations in September. This will be the largest meeting of world leaders ever. In the report, the Secretary-General outlines, among other goals, the strengthening of the capacity of the UN to conduct peace operations and the targeting of sanctions against delinquent rulers rather than innocent populations.

Could the minister find a way for this report to be made available to all members of this Parliament, and by that I mean all members of the House of Commons and all members of the Senate? It is such a remarkable and forward-minded report.



**Hon. J. Bernard Boudreau (Leader of the Government):**

Honourable senators, with respect to the request that my honourable friend's views regarding sanctions on Iraq be conveyed clearly to the minister, I will undertake to do that expeditiously and to ensure that his views are known. I make that offer to other senators who wish to express their views on that particular subject. I will convey their views to the minister.

With respect to the UN report, I will make every effort to see if it can be distributed. It appears to be a document of major import in international relations, and I will do whatever I can to ensure that copies are available. In any event, I will respond specifically to the honourable senator on his request.

### VISITORS IN THE GALLERY

**The Hon. the Speaker:** Honourable senators, I should like to introduce some special guests in the gallery. We have with us today a group of judges and jurists from the Constitutional Court of the Russian Federation. It was my pleasure to receive them today with a group of senators who are jurists themselves. On behalf of the Senate of Canada, I bid them a warm welcome to our chamber.

**Hon. Senators:** Hear, hear!

[Later]

**The Hon. the Speaker:** Honourable senators, I should like to introduce to you some distinguished visitors in the gallery. This is a delegation from the Republic of Latvia. They are led by Mr. Jānis Straume, the Chairman of the Saeima of the Republic of Latvia. They are accompanied by His Excellency Jānis Lūsis, the ambassador of the Republic of Latvia.

On behalf of all honourable senators, I wish you welcome to the Senate of Canada.

**Hon. Senators:** Hear, hear!

[Translation]

### BUSINESS OF THE SENATE

**Hon. Céline Hervieux-Payette:** Honourable senators, if permission is granted, I should like the Senate to revert to presentation of reports from standing or special committees.

**The Hon. the Speaker:** Is leave granted, honourable senators?

[English]

**Hon. John Lynch-Staunton (Leader of the Opposition):** Honourable senators, I thought we had an agreement that we would carry on with the Orders of the Day and the timetable. If someone wants to revert, we do that at the end of the sitting.

[Translation]

**The Hon. the Speaker:** Leave is not granted, honourable senators.

### PERSONAL INFORMATION PROTECTION AND ELECTRONIC DOCUMENTS BILL

MESSAGE FROM COMMONS

**The Hon. the Speaker** informed the Senate that a message had been received from the House of Commons returning Bill C-6, to support and promote electronic commerce by protecting personal information that is collected, used or disclosed in certain circumstances, by providing for the use of electronic means to communicate or record information or transactions and by amending the Canada Evidence Act, the Statutory Instruments Act and the Statute Revision Act, and to acquaint the Senate that the Commons had agreed to the amendments made by the Senate to this bill, without amendment.

[English]

### ORDERS OF THE DAY

#### NISGA'A FINAL AGREEMENT BILL

THIRD READING—DEBATE SUSPENDED

On the Order:

Resuming debate on the motion of the Honourable Senator Austin, P.C., seconded by the Honourable Senator Gill, for the third reading of Bill C-9, to give effect to the Nisga'a Final Agreement;

And on the motion in amendment of the Honourable Senator St. Germain, P.C., seconded by the Honourable Senator Andreychuk, that the Bill be not now read a third time, but that it be read a third time this day six months hence.

**Hon. Jack Austin:** Honourable senators, with leave of the Senate, I am now prepared to deal with the questions raised in debate last Thursday, March 30, and yesterday by Senators Kinsella, Grafstein, Beaudoin and Andreychuk. I do this on the understanding that the time I take here will not count against my separate role, which is to speak on the amendment proposed yesterday by Senator St. Germain.

**The Hon. the Speaker:** Is leave granted, honourable senators?

**Hon. Senators:** Agreed.

**Senator Austin:** Honourable senators, let me first deal with the questions of repealability and amendability of Bill C-9. Honourable Senator Kinsella raised a question that lead to an intriguing set of pathways.

As I said previously, the Nisga'a Final Agreement is a treaty that sets out what all three parties have agreed should be Nisga'a rights.

• (1410)

The same parties that made the agreement could, in future, decide to change the agreement. No party has the authority to change the agreement unilaterally. This does not mean that the treaty rights are absolute or entrenched in the Constitution. The courts have said that treaty rights are not absolute. The courts have accepted that governments may have compelling and substantial legislative objectives that would justify infringement of the terms of a treaty. I wish to emphasize that there is no standard designed to prevent any future Parliament from acting. Rather, the courts require that governments demonstrate justification for any actions inconsistent with the terms of the treaty.

The courts have said that the honour of the Crown is always at stake when the Crown deals with aboriginal peoples, so it should hardly be surprising that the courts would require justification for interference with the agreed upon terms of a treaty. Put a different way, should a future Parliament be able to unilaterally interfere with treaty rights without any justification? If the right is sufficiently important to qualify as a treaty right, it would seem sensible to protect that right by requiring that any future interference be justified. Again, this is a protection the courts have established for treaty rights. It does not make those rights absolute so that Parliament can never act again. That is the reason treaty rights are described as constitutionally protected rights rather than constitutionally entrenched rights.

It is necessary to distinguish between alteration of the treaty rights and alteration of Bill C-9. It is conceivable that a future Parliament might want to amend or repeal some part of Bill C-9. If the proposed challenge to Bill C-9 would cause an infringement of the Nisga'a treaty, then the Nisga'a could challenge the legislation and call upon the government to justify the infringement of the Nisga'a treaty.

On the other hand, a future Parliament may propose changes to portions of Bill C-9 which would not infringe upon the terms of the Nisga'a treaty. Parliament would be interested, no doubt, in the views of the Nisga'a, but there would be no grounds for the Nisga'a to challenge the proposed legislative change.

Some have questioned whether Parliament's power is diminished in the particular case of the Nisga'a treaty because it includes self-government provisions. Will the courts jettison the above principles of treaty interpretation simply because this treaty includes self-government arrangements? I think not,

particularly because the parties have made it clear in the terms of the treaty itself that they intend to include a treaty and land claims agreement within the meaning of sections 25 and 35 of the Constitution Act, 1982. Bill C-9 makes it clear that this is Parliament's intention in giving effect to the treaty.

Some argue that by providing, in some cases, for Nisga'a laws to prevail over federal and provincial laws, the parties have expressly agreed never to allow a future Parliament to prevail over the terms of the treaty. However, the parties have set out in the treaty the rules for the relationship of laws they wish to have the courts apply in ordinary situations.

Some issues, such as public order, peace, and safety are so important to government that federal and provincial laws should prevail. Other subjects, such as Nisga'a culture and Nisga'a lands, are considered so important to the Nisga'a that the federal and provincial governments accept that ordinarily the court should allow Nisga'a laws to prevail. However, it is important to understand that the treaty sets out what will ordinarily be the rules for a relationship of laws as agreed to by the parties. The treaty, of course, does not set out what happens if Parliament wants to act in a manner different from that agreed to in the treaty by infringing its terms and passing a law that is intended to prevail over the treaty.

I want especially to emphasize that paragraph 8 of the general provisions chapter provides that the treaty "...does not alter the Constitution of Canada...."

It is important to remember that the general provisions prevail over the other chapters of the treaty. Here, I refer to paragraph 56 of the general provisions. Therefore, the provisions which allow Nisga'a laws to prevail in chapters other than the Nisga'a government chapter must be interpreted in light of the paramount direction in the general provisions chapter, that there is no change to the Constitution of Canada, including Parliament's future authority to make laws.

Finally, collateral agreements such as the Fiscal Financing Agreement, to which I referred yesterday, and the Harvest Agreement are expressly said not to be treaties and are drafted so as to be separate from the rest of the treaty.

Parliament could unilaterally alter the terms of those contracts, although it is difficult to envision a situation where they would have any desire to do so. Of course, if any changes would alter or infringe upon the fundamental parameters of these collateral agreements as set out in the treaty, these infringements of the treaty itself would have to be justified just like any other infringement of the Nisga'a treaty.

Honourable senators, I gave that long and detailed answer because I think it was important to do so. However, to summarize, nothing in Bill C-9 or the treaty is absolute. Parliament can legislate. Of course, there will be a claim for compensation if it legislates without agreement.



Senator Kinsella also raised questions regarding emergency provisions and international obligations. In response to those questions, paragraph 13 of the general provisions makes it clear that federal and provincial laws apply to the Nisga'a and to Nisga'a lands. Therefore, it is clear that the federal Emergencies Act will apply, for example. In addition, paragraphs 122 to 125 of the Nisga'a government chapter deal with emergency preparedness. Paragraph 125 of the Nisga'a government chapter states:

Nothing in this Agreement affects the authority of:

- a. Canada to declare a national emergency; or
- b. British Columbia to declare a provincial emergency

in accordance with federal and provincial laws of general application.

To further ensure that emergencies are dealt with in the same way as in other parts of Canada, the Nisga'a have agreed to act as a local authority in dealing with emergency measures and emergency preparedness in accordance with federal and provincial laws of general application. When there is an emergency, the needed personnel, including police officers and members of the Canadian Armed Forces, can go onto Nisga'a lands to respond to the emergency.

That is made clear in paragraph 15 of the access chapter. In addition, paragraph 17 provides that the treaty does not limit the authority of Canada or the Minister of National Defence to carry out activities related to national defence and security. This provides additional certainty in dealing with national security emergencies under the federal Emergencies Act.

Although it is in the provincial realm, paragraph 90 of the Nisga'a government chapter provides that British Columbia can act to protect a child "if there is an emergency in which a child on Nisga'a Lands is at risk."

I am told that the parties included these comprehensive arrangements to deal with emergencies because all parties shared the desire to ensure that emergencies are dealt with as they are in other parts of Canada.

I should like to refer briefly to the law. In order to deal with an emergency, Canada or British Columbia might have to infringe upon Nisga'a treaty rights. The emergency is likely to be considered a lawful justification for the infringement of those treaty rights. I have referred to *Regina v. Sparrow* where the court said:

An objective aimed at preserving s. 35(1) rights by conserving and managing a natural resource, for example, would be valid. Also valid would be objectives purporting to prevent the exercise of s. 35(1) rights that would cause harm to the general populace or to aboriginal peoples

themselves, or other objectives found to be compelling and substantial.

Other cases deal with what would constitute a valid legislative objective: *Badger*, a 1996 case; *Gladstone*, to which I referred yesterday; and *Delgamuukw*. These same arguments will apply *mutatis mutandis* to Canada's international obligations.

One aspect of Canada's international relations relates to the famous *Lovelace* case before the United Nations Human Rights Commission in the early 1980s. This was referred to yesterday by honourable senators opposite. The subject matter of the case related to certain discriminatory provisions of the Indian Act.

• (1420)

The membership provisions in the Indian Act treated marriage of men and women differently. Indian women who married non-Indians lost their band membership but men did not lose band membership in similar circumstances. Also, non-Indian women who married Indian men could become members of their husband's band, but the same was not the case for non-Indian men who married into bands. Partly as a result of UN criticisms, the Indian Act was amended in 1985, as we heard yesterday, to repeal these discriminatory provisions. The 1985 amendments to the Indian Act were brought into effect at the same time as the equality provision in section 15 of the Charter.

The eligibility and enrolment chapter of the Nisga'a treaty allows men and women of Nisga'a ancestry to be enrolled. Although there is a reference to a person whose mother was born into one of the Nisga'a tribes, to reflect the matrilineal tradition of the Nisga'a, this provision of course applied equally to men and women. The eligibility criteria also include one provision which allows for aboriginal persons who marry a Nisga'a person to be enrolled, but again this provision applies equally to men and women.

The Nisga'a may make laws with respect to Nisga'a citizenship, and they will be subject to the requirements of the Charter, as with all other law-making power. Section 28 of the Charter guarantees all Charter rights equally to men and women. In addition, section 35(4) of the Constitution Act, 1982, guarantees all treaty rights equally to men and women.

Finally, I turn to the question which Senator Beaudoin and Senator Andreychuk raised in relation to the application of the Charter of Rights to Nisga'a laws. Paragraph 9 of the general provisions of the Nisga'a Final Agreement provides that the Canadian Charter of Rights and Freedoms applies to Nisga'a government in respect of all matters within its authority, bearing in mind the free and democratic nature of Nisga'a government as set out in this agreement. This makes clear that the Charter will apply to all activities of Nisga'a government. Therefore, the Charter will apply not only to laws passed by Nisga'a government, but also to other activities such as government decisions to hire individuals or issue permits. The protections of the Charter will be available to all persons affected by Nisga'a government decisions, not just the Nisga'a.



The last phrase of this provision, "bearing in mind the free and democratic nature of Nisga'a government," is similar to the language of section 1 of the Charter, which makes it clear the Charter of Rights is not absolute. Governments, including Nisga'a government, must demonstrate the justification for any limitations on Charter freedoms. This phrase, therefore, reflects that the Nisga'a Final Agreement provisions establish a free and democratic government structure. When Nisga'a government is established on those terms, it will be able to rely on section 1 of the Charter, like other governments in Canada.

Section 25 of the Charter will apply to Nisga'a governments, and, therefore, the protection of individual rights under the Charter must be construed in light of the existence of treaty rights. This is one of a series of provisions in the Charter which protect collective rights or clarify that individual rights under the Charter should be interpreted to accommodate other rights in Canada.

For example, section 15 protects disadvantaged groups; section 27 provides for preservation and enhancement of the multicultural heritage; sections 16 to 23 protect francophone and anglophone rights; and section 29 protects rights to educate children in religious schools. Section 28 of the Charter is worded so as to guarantee Charter rights equally to men and women, "notwithstanding anything in this Charter." Section 25 of the Charter does not contain the same description of an intention to prevail over Charter rights.

In addition to these provisions of the Charter, section 35(4) of the Constitution Act, 1982, provides that "Notwithstanding any other provision of this Act — which includes the Charter — the aboriginal and treaty rights referred to in subsection (1) are guaranteed equally to male and female persons."

Finally, an important point that was raised by Senator Beaudoin: Nisga'a government will not be able to use section 33 of the Charter, the notwithstanding clause. This section only applies to the Parliament of Canada and provincial legislatures.

Honourable senators, that ends the answer portion of my responsibilities.

**The Hon. the Speaker:** Honourable senators, I have a request from certain senators who wish to ask questions of the Honourable Senator Austin. I assume that the leave that was granted to answer the question also provides for questions following that. Is that agreed?

**Hon. Senators:** Agreed.

**Hon. Lowell Murray:** Honourable senators, I will need to study the presentation made by Senator Austin and obtain some advice from scholars such as Senator Beaudoin before making comments.

I wish to ask Senator Austin the following question with regard to his statement on Thursday last, when he said at page 909 of the *Debates of the Senate*, as follows:

This Parliament, by itself, could not change the legal enforceability of Bill C-9, nor could the legislature of British Columbia. Incidentally, it could not be repudiated by the Nisga'a themselves.

The one constitutional method that exists for removing Bill C-9 from law is a constitutional amendment under the provisions of the Constitution Act. That would have to be done by the federal Parliament and the legislatures of seven provinces representing more than 50 per cent of the population.

Is that statement still operative following Senator Austin's statement today?

**Senator Austin:** I believe so.

**Senator Murray:** Then, in a nutshell, what is the process by which Bill C-9 would be amended?

**Senator Austin:** Honourable senators, as I have tried to say, apart from the process of a constitutional amendment to remove the bill entirely, the bill can be amended by agreement.

**Senator Murray:** Tripartite?

**Senator Austin:** Tripartite agreement. The bill can also be changed by Parliament if it can justify the infringement on treaty rights.

**Senator Murray:** My final question is perhaps more a political question than a legal one. The honourable senator may wish to defer to someone speaking for the government in the debate on Bill C-20.

I am still puzzled and would like to know why the government is taking such a restrictive view of section 25 and section 35 rights as they would apply to the aboriginal peoples of Quebec in the event of a secession amendment, and why they are taking such a Liberal view of those sections when it comes to this treaty?

**Senator Austin:** The Honourable Senator Murray has put that question previously and I declined to go down that path. I decline to walk with him down that path this second time.

**Hon. Gerry St. Germain:** Honourable senators, my question is to the Honourable Senator Austin, who is the Chair of the Senate Aboriginal Peoples Committee.

Obviously, the honourable senator has conferred with someone in the last 24 hours. The question that I asked yesterday — and I may have missed the answer in his delivery — was whether the government would be prepared to fund the Gitksan and the Gitanyow in their legal pursuit if this bill passes as it is. Obviously, they will be forced into litigation to resolve their overlap situation on the lands that have been impacted by the signing and the ratification of the Nisga'a agreement. Does the honourable senator have an answer to that question?

**Senator Austin:** As I said in answer to the same question yesterday asked by the Honourable Senator St. Germain, I do not speak for the government. I am the sponsor the bill and I can make no statement one way or the other as to what the government is prepared to do in the financing of litigation by aboriginal communities.

**Hon. A. Raynell Andreychuk:** Honourable senators, I wish to thank the Honourable Senator Austin for his clarifications today. I am a bit confused, however, because it seems to be a bit of a moving target. He said that Parliament could, in fact, repeal this bill in favour of some overriding national interest. If that is so, then is he accepting now the paramountcy of Parliament, as opposed to some of the legal experts who came to us and said that the paramountcy of Parliament no longer exists? If the honourable senator accepts the paramountcy of Parliament, is he saying that no third order of government is created by this bill?

• (1430)

**Senator Austin:** Honourable senators, Parliament has retained the power to infringe with justification as set out in the judicial decisions I have mentioned. That does not mean to repeal the bill; it means that some portion of the Nisga'a Final Agreement in Bill C-9 could be infringed upon if there were justification. The powers of protection under section 35 are not absolute.

With respect to questions about a third order of government, that is a political phrase. I do not wish to use the phrase. Some witnesses used it. In my view, that is a catch-all phrase and not useful. Certain powers are given to the Nisga'a under this agreement. They will become a government. Whether they are a third order or under any other order of government, I do not care to address that question.

I believe there was a question in between my two answers, honourable senators, and I may not have understood it.

**Senator Andreychuk:** Two professors from Osgoode Hall and Professor Doug Sanders from the University of British Columbia testified that there is no paramountcy of Parliament, period, not even in the way that the honourable senator is stating it. They carefully said that by virtue of section 35, we already have placed power in the hands of the aboriginal peoples. When aboriginal people wish to exercise their right of governance, which, in the opinion of our witnesses, the Nisga'a agreement does, aboriginal people will have a concurrent, absolute jurisdiction that can never be taken away from them. The witnesses did not put forth a qualifier for a national justification, as has the honourable senator. Is the honourable senator, therefore, discounting the position of our legal witnesses and subscribing to the position that he has offered today?

**Senator Austin:** Honourable senators, that is a neat question.

My position is that the jurisdiction to legislate the division of powers, as per section 91 and 92, remains unimpaired. However,

section 35 does provide for constitutional protection of Bill C-9 and its legislative provisions. Parliament retains the right to legislate, but it must justify the infringement or the courts will find that legislation *ultra vires*; that is to say, an infringement of section 35 protection.

**Hon. David Tkachuk:** Honourable senators, further to Senator Andreychuk's question on a third order of government and Senator Austin's dismissal of the question as using political words upon which he did not wish to comment, I should like to ask a question.

Honourable senators, we had this discussion with the professors from Osgoode Hall. We have provincial governments and a federal government under sections 91 and 92 of the Constitution. We then have a delegated third order of government. Municipal governments are delegated by provincial governments. If those are the three levels of government in Canada, what is this?

**Senator Austin:** There is an aboriginal government.

**Senator Tkachuk:** If we continue to build aboriginal governments under section 35 as this bill says, we are creating another order of government which is neither provincial, federal nor delegated. This must be another order of government. Whether we call it a third or a fourth does not matter, but it definitely is another order of government, is it not?

**Senator Austin:** It is another government. That is as far as I wish to go with my own position. Certain witnesses said that it was a third order of government. Some of those witnesses supported the bill and some of those witnesses who called it a third order opposed the bill.

"A new order of government" was an easy catch-phrase for describing something different from a federal, provincial or municipal government. As far as I am concerned, the accurate way to describe this government at the moment is that this is an aboriginal government we are creating with this bill. The rest of the discussion, as far as I am concerned, is rhetorical.

**Senator Tkachuk:** I am not sure if it is rhetorical. I am not even sure whether I would support another aboriginal government if it were being brought in through the front door and not the back door.

I have spoken to two premiers who were involved in the discussions of 1982 and 1983. It is their opinion that if they had known that this would have been the result of those discussions, section 35 would never have happened.

**Hon. John Lynch-Staunton (Leader of the Opposition):** Honourable senators, I have a supplementary question with respect to the question of a new order of government. With all due respect to my colleague Senator Tkachuk, a municipality is not a government. It is an administration whose powers have been delegated by a provincial government.



When the Honourable Senator Austin uses the word "government" in reference to the Nisga'a agreement, is he placing that government on the same level as a provincial government or the federal government? Are the three levels equal? If they are not, then the word "government" does not apply.

**Senator Austin:** It is an old notion, Senator Lynch-Staunton, that a provincial government is not equal to the federal government. When I studied constitutional law, I had a provincial rights professor. His view was that each government was a senior government within its powers under the British North America Act of the time. They are parallel in power; they are not one high, one low. I rather fancy that way of looking at governments in this country.

**Senator Lynch-Staunton:** Parallel or equal, they are similar; they each have respective jurisdictions. They are each considered partners of the other. Whenever there is a federal-provincial conference, the partners meet.

Is an aboriginal government as defined under this treaty at the same level as the provincial governments and the federal government?

**Senator Austin:** The aboriginal government does not have the powers of the federal government. It does not have the powers of a provincial government in this country. However, it does have powers to legislate within the terms of Bill C-9. It is a government.

Where I would place aboriginal government in terms of a geometric pattern or organigram is of no relevance. We should be looking at what we are doing here. The rest of it becomes an exercise in either a philosophy or political science class.

Honourable senators, we are creating an aboriginal government that is constitutionally protected under section 35.

**Senator Lynch-Staunton:** However, we are using terms that are usually applicable to a separate entity. We are using the terms "government", "citizenship" and "constitution". We are deciding who is eligible to vote, depending on the issue. As a result, many of us are concerned by the fact that, wittingly or not, we may be creating a new, separate, independent entity within Canada, one with its own constitution and regulations. This body could name its own judges, for instance. All other Canadian judges, to my knowledge, are named by federal and provincial governments. If I am wrong, the honourable senator may correct me.

**Senator Austin:** That is correct.

• (1440)

**Senator Lynch-Staunton:** Good. At least that part of my statement is right. By the vocabulary we are using, we are sanctioning a separate entity, which has never happened before in this country.

**Senator Austin:** Those last few words are absolutely correct. We are creating something new here, and that is a form of aboriginal government that will be constitutionally protected under section 35. That is seen as a desirable step, certainly by many on this side, and I hope many on the side opposite. It was a step that was described in full in section 45 of the Charlottetown agreement.

**Senator Lynch-Staunton:** That section was rejected.

**Senator Austin:** It was rejected for unknown reasons.

**Senator Lynch-Staunton:** Ask your colleagues.

**Senator Austin:** The government of former prime minister Brian Mulroney made that proposal to the people of Canada with the agreement of all premiers. It is an issue that should cause no fear or concern to senators on that side. The policy comes from the honourable senator's party and from former prime minister Mulroney.

**Hon. Jeremiah S. Grafstein:** Honourable senators, I have a supplemental question arising out of the answer that the Honourable Senator Austin gave to one of the senators opposite, which I did not quite follow. It is regarding the honourable senator's analysis based on his teacher, who said that the provincial government and the federal government were exclusively autonomous in their own spheres.

What does the honourable senator say about peace, order and good government? It was clear to me in reading Mr. Hogg, of Osgoode Hall, who apparently supports this legislation, that there are extensive powers of the federal government under peace, order and good government that may be attenuated substantially by this legislation. Is it not fairer to say that there are two orders of government, or two government architectures, with the federal government having the override to fill in all the gaps not otherwise exclusively allocated under the Constitution to the provinces?

**Senator Austin:** The Honourable Senator Grafstein is correct. The federal government has all the residual power not given to the provinces. The answer that I gave to the Honourable Senator Lynch-Staunton started with the phrase, "I had a constitutional law professor..."

**Senator Grafstein:** Fair enough.

**Senator Austin:** My constitutional law professor was a provincial rights professor. He would not admit under any conditions that the provinces were less than equal. I once had a premier in my province, W.A.C. Bennett, who certainly would never admit that his province was not equal to a federal government.

**Senator Lynch-Staunton:** You have a fellow in the other place, as well.



**Hon. Gérald-A. Beaudoin:** Honourable senators, I agree with the Honourable Senator Austin that collective rights and individual rights are not absolute. It is true that Parliament may restrict a collective right or an individual right. However, the question raised by the Honourable Senator Andreychuk is about the emergency power.

The provinces and the Parliament are sovereign in their spheres. There is no doubt about that. They should not intervene. However, there is one exception to that, namely, the emergency power of the federal authority under peace, order and good government in case of war or a crisis. It has not been a problem thus far with two orders of government because the courts have accepted that, for example, in the case of emergency under the War Measures Act, Parliament may intervene in the provincial field for the duration of the conflict.

The question is: What would happen if there is a third order of government? Obviously, we do not have any jurisprudence on that because the Supreme Court has not ruled on it yet. My guess is that if there were an emergency power and a third order of government, Parliament would have the power to intervene, logically. The law must be founded on logic. Perhaps that is the only answer that we may give to this problem.

As I said the other day, the Supreme Court has not reached that goal of a third order of government, even in the *Delgamuukw* case. The problem is that we have some doubts, on this side at least, about the question of paramountcy in 20 areas of concurrent powers.

**Senator Austin:** Fourteen.

**Senator Beaudoin:** It is better if it is only 14, but the principle is the same. I still have doubts about this. However, the only way to solve the situation is for the government to go to the court as a reference case. I have been told that the government will not do that. The government has the right to say that they are satisfied with the constitutionality of the proposed legislation. For that reason, we are dealing with those serious doubts.

All lawyers are not on the same side. Some said that it is *ultra vires*, and others said no. What does the honourable senator have to say about that?

**Senator Austin:** I tried to make the following point in my earlier remarks today. The Nisga'a Final Agreement, under paragraph 13, provides that federal and provincial laws apply to the Nisga'a and the Nisga'a land, and that the federal Emergencies Act and the provincial legislation of the same nature will apply through the agreement.

I also agree with you that the paramount power of the federal government in the case of an emergency would override. The test of justification would be very simple in that situation.

**Senator Beaudoin:** What about the 14 cases to which I refer? That is my only problem with that project. I have no problem

with the concurrent powers in this legislation. We have concurrent power with the provinces, currently.

However, in this case we go one step further. We say that paramountcy exists in 14 areas. Ordinary jurisprudence does not say that. Is it not something new that is very close to a third order of government?

**Senator Austin:** In my view, the paramountcy is there for the day-to-day operations of the Nisga'a government. In the event of an emergency, or any other just reason to infringe, Parliament has retained that authority. However, it must demonstrate a just reason.

**Senator Tkachuk:** The honourable senator said that this agreement is similar to the Charlottetown accord, and to something that the Conservative government had proposed under Brian Mulroney. He is correct in that. The difference is that Brian Mulroney and the government at that time decided that the people should have something to say about a constitutional amendment, and the people of Canada rejected it.

It is not for the honourable senator to say, and certainly not for this government to say, that they disagree with what the people said, but that they do not really know what that meant. If they want to know what it means, why was this issue not taken to the people? The people of B.C. have been asking for a referendum. That is what makes us suspicious. Let them decide and make it a constitutional amendment. Bring it through the front door and not the back door, which is what you are trying to do here.

**Senator Austin:** That is very much a political statement. I will answer it by saying that I am a believer in responsible government.

**Some Hon. Senators:** Hear, hear!

• (1450)

**The Hon. the Speaker:** Honourable senators, if the questions are concluded, we can now proceed to the debate on the amendment that is before us.

**Senator Austin:** Honourable senators, I rise now to open debate on Senator St. Germain's infamous amendment, if I may call it that. The proposed amendment states:

That Bill C-9, an act to give effect to the Nisga'a Final Agreement, be not now read a third time, but that it be read a third time six months hence.

In the course of yesterday's debate, Senator St. Germain continuously referred to the Nisga'a negotiating in good faith and being excellent negotiators. These statements, in my opinion, were drawn to highlight his repeated assertions that the federal Crown and the provincial Crown negotiated with "a lack of good faith." He also said:

The federal and provincial governments believe they do not have to bargain in good faith.

He said further:

The government will not follow a doctrine of fairness...

His logic, if I can call it that, then concludes that the solution to the government's bad faith is to hoist the bill and the treaty so that the Nisga'a, who have bargained in good faith by Senator St. Germain's admission, should bargain again through compulsory arbitration.

The charge that the governments failed to bargain in good faith is baseless. To prop up his argument, Senator St. Germain dances around the words of the trial judge in the *Luuxhon* case. The judge set out a general proposition that the Crown has a duty to negotiate in good faith. The judge did not find that the Crown failed to bargain in good faith.

The Gitanyow, through litigation, are trying to establish the criteria by which the Crown must negotiate. The position of the Crown is that it is not for the court to impose criteria, but that the terms of negotiation are for the parties. The Gitanyow are not asking the court to set the terms of negotiation by which the Gitanyow must negotiate.

Another argument used by Senator St. Germain to try to show that the Crown failed to bargain in good faith relates to the role of Tom Molloy, Q.C., chief negotiator for the federal Crown. In questioning Glen Williams, chief negotiator for the Gitanyow, Senator St. Germain himself suggested a conflict of interest on the basis that Mr. Molloy had acted for the Crown in negotiating with the Gitksan and the Gitanyow and then had been assigned as chief negotiator for the Crown with the Nisga'a.

**Senator St. Germain:** You are wrong there. I did not say that yesterday. You have your facts wrong, Senator Austin.

**Senator Austin:** Why don't you speak when it is your turn?

**Senator St. Germain:** I am doing what you did yesterday.

**Senator Austin:** I believe my facts are right.

I should like to refer to pages 34 to 36 of the evidence given to the committee on March 24 in which Mr. Molloy said that at no time had anyone ever alleged a breach of good faith or a conflict of interest on his part. He said, as did the minister in that evidence, that at all times, all of the issues with respect to boundaries and land claims were on the table. All treaty negotiators had the same information and no information given by any tribal group was given in confidence. Everything that was argued was argued plainly and simply by all of the parties.

The idea that the chief negotiator for the Crown should bargain in bad faith is a serious accusation made by Senator St. Germain. The honourable senator will have to show in what ways he thinks the chief negotiator did so.

Minister Nault, in the same evidence dealing with the question of negotiating in bad faith, made it clear that he was very

unhappy with that accusation. He said that the phrase "bad faith" seemed to indicate a lack of agreement with the position of the other side that there was not enough land on the table. Was that negotiating in bad faith? There was not enough money on the table. Was that negotiating in bad faith? The Crown, in the honour of the Crown, must negotiate in good faith, but no one can set the terms of that negotiation for the Crown. The Crown will establish on what terms and on what basis it wishes to negotiate.

"Bad faith" is a term that indicates dishonesty, deliberate intention to misrepresent and duplicity. In my opinion, those elements are missing from the presentation of the Honourable Senator St. Germain and they are missing from the real facts of this particular case.

I found that Senator St. Germain's line of argument, which I am sure he sincerely believed was in the interests of the Gitanyow and the Gitksan, would inevitably heighten the adversarial character of their relationship with the Nisga'a. He could have played a role as a mediator. He could have approached the issues of overlap as someone who would use their good offices to endeavour to bring about a fair and just conclusion. However, unfortunately, he saw his role as a partisan and as an adversary. In my opinion, the result is to make the future relationship of the Gitanyow and the Gitksan with the Nisga'a even more difficult. At the same time, I believe that when this bill is passed, the Nisga'a will seek to establish permanent good relations with the two neighbouring nations, the Gitksan and the Gitanyow.

The honourable senator referred to the settlement of the boundaries with the Tahltan as incidental; but, in fact, the agreement between the Nisga'a and the Tahltan settles a much larger area than is under discussion with the Gitksan and the Gitanyow.

Minister Nault made it clear that he was at the negotiation table with the Gitanyow. They were at the table, and he could not understand where an accusation of bad faith could come from when they were continuing to negotiate with him. If they believed that there was bad faith, they could withdraw from the negotiations. Why would they continue?

Honourable senators, the whole of the proposed amendment rests on Senator St. Germain's arguments that the government behaved in bad faith. I absolutely reject that suggestion. I suggested to Senator St. Germain that he should withdraw the amendment. I do not think it is fairly based. I would give him another opportunity to withdraw his accusations that the Crown has not dealt fairly.

**Senator St. Germain:** Honourable senators, I am really at a loss for words. I never said anything in this place about conflict. I did, however, in committee. I asked Mr. Molloy if he did not think he was in conflict. Yesterday, however, I never uttered a word in this chamber in regard to that issue. I believe it was Senator Andreychuk who brought this fact forward yesterday in her questioning.



If the Honourable Senator Austin is on top of this file, how can he be confused? He is citing me for this, that and the other thing. Yesterday, I never said a blessed thing about Tom Molloy or the conflict. I did in committee, but I did not in this chamber. Does the honourable senator agree?

**Senator Austin:** Yes, that is correct.

• (15:00)

**Senator St. Germain:** I merely wish to set the record straight, honourable senators. Senator Austin says I am questioning the methodology. I am only trying to represent the case of the Gitanyow and the Gitxsan. I am not prefabricating anything. If my interpretation of Justice Williamson in the *Luuxhon* case is wrong, I can accept that, but I do not think that I am wrong in my reading of this particular judgment.

Honourable senators, there is no way in the world that I am trying to represent anything partisan. My party voted in favour of this bill in the House of Commons. What is wrong with Senator Austin? Is he asleep at the switch?

**Senator Austin:** Are you going to vote in favour of the bill here?

**Senator St. Germain:** I will do what I think is right for aboriginal people and for British Columbians. I will not be guided or rushed by Senator Austin or anyone else in this country. This is not a Liberal or a Conservative issue. As the honourable senator said, Prime Minister Brian Mulroney came forward with a suggestion on self-government. Let's get the record straight and quit trying to play a game that forces us into a partisan situation on an issue that should remain way above that.

**Some Hon. Senators:** Hear, hear!

**Senator Austin:** Have you accused the government of negotiating in bad faith, or haven't you?

**Senator St. Germain:** I think the government did not allow the Gitanyow and the Gitxsan to put their case forward regarding this land settlement, and I will tell you why. Anyone who is prepared to accept the decision of an arbitrator, if they are prepared to put their case before a board of arbitration, must think they have a case. Obviously the Gitxsan and Gitanyow did not feel they were treated fairly in that case.

It is not a question of the Nisga'a. Sure, the Nisga'a deserve an agreement, and I have never said they do not. However, they do not deserve this partisan rhetoric that you are bantering about here today.

**Some Hon. Senators:** Oh, oh!

**Senator St. Germain:** I have the floor, honourable senators.

**The Hon. The Speaker *pro tempore*:** Does the Honourable Senator St. Germain have a question?

**Senator Kinsella:** Take your time.

**Senator Austin:** I am waiting.

**Senator St. Germain:** In regard to this adversarial role, I am simply telling this place what I have been told. There has been conflict in this region of B.C. before, as those of us who have taken the time to go up there and actually talk to the people on the ground know. Had the committee gone up there and listened to the people in some of these places, it might have had a different view as well.

Honourable senators, it is my right to rise in the chamber for comments and questions, and I want to be certain of something. Does Senator Austin agree that he was wrong and that I never mentioned this yesterday in the Senate in regards to Tom Molloy?

**Senator Austin:** For a few moments, I thought that Senator St. Germain was closing the debate on the amendment, but I understand he probably is not.

**Senator Kinsella:** Probably?

**Senator Austin:** It is one thing to disagree with the government's decision to proceed with the Nisga'a agreement; it is quite another thing to stand up and say in debate yesterday, three times, that the government was acting in bad faith. That is what I am disputing. If the honourable senator finds that the government has acted in bad faith, he should give us his evidence.

**Senator St. Germain:** I have given the honourable senator my evidence. Now he is asking me a question. We will reverse roles, then. Obviously the government has acted in bad faith because it failed to fund these people properly so that they could arrive at a negotiated settlement on time. The judge would not have pointed out that sharp dealing and oblique methods should not be part of the process unless he thought something was there. Why did the government appeal the case? Why not just accept what Judge Williamson said? The government appealed the case. That is why I believe that the government possibly could have bargained in bad faith.

**Senator Austin:** The Gitanyow and the Gitxsan walked away from the negotiating table and started litigation. The *Delgamuukw* and *Luuxhon* cases resulted from their decision to stop negotiating and to litigate. That is why we are where we are.

**Hon. Pat Carney:** Honourable senators, I think it is time for a woman's touch in this debate.

I am proud to participate in this historic debate on Bill C-9 and the proposed amendment relating to the Nisga'a Final Agreement. I am using my time to read into the record from the mailbag the views of some British Columbians who have written to me on this issue. British Columbians feel they have not had a chance to have much say, so I am bringing their letters to honourable senators.



Like Senator St. Germain, I congratulate the leaders and the negotiators of both the Nisga'a First Nation and the Government of Canada for their hard work and patience in concluding this complex agreement, an agreement which we are told will serve as a template for some 50 other agreements. A secondary reason for it being so important is that it will be replicated in other areas. These treaty negotiations will change the nature of British Columbia and Canada, for good or bad, forever. We must proceed with caution to ensure that the objectives of our Canadian Constitution are upheld while achieving self-government for aboriginal people.

Senator Austin referred to the Charlottetown Agreement. As a British Columbian, I voted against the Charlottetown Agreement, and so did the majority of people in every single riding in British Columbia except my former riding of Vancouver Centre. Every other riding, 31 of them at the time, I believe, voted against it. Do not mention the Charlottetown Agreement in B.C. For the record, British Columbians did not support the view of senators or that of Brian Mulroney.

As Senator St. Germain has stated, British Columbians want their land claims and self-governance agreements resolved so that we can have certainty on this issue and so that our social and economic activities can proceed in harmony toward our common future in our beautiful coastal province.

Few British Columbians are aware of the details of the treaty, and, in fact, information on it is difficult to find. One example is the rights of native women, who tell me they do not have the protection enjoyed by other Canadian women. Honourable senators will remember the evidence in committee of Ms Mercy Thomas of the Kincolith band in Kincolith, B.C. This country is known to me. I have travelled it, and I have visited these villages. She said:

My concerns are not only for myself, my wilp —

— or family —

— and other first Nisga'a women, but also for other First Nations women who are likely to suffer under similar provisions in other treaties. I worry about the loss of fundamental gender equality and other rights provided by the Canadian Charter, the Constitution and common law.

It is my opinion that this treaty is a dictatorship-structured treaty. Those who have concerns are left on the outside looking in. A structure is not in place to ensure that future —

— Nisga'a —

— governments are credible administrations, with proper protocol and equality rights.

In this treaty, honourable senators, little is said about the rights of native women. At our committee hearings, the chief

negotiator, Tom Molloy, said the rights of native women would be enhanced. However, having looked at this treaty and read it from cover to cover, I cannot see any evidence to support his views.

I met with the Treaty Commission Office in Vancouver, and they explained that B.C. family law applying to matrimonial property would apply at marriage breakup for Nisga'a women, but as Wendy Lockhart Lundberg of the Squamish band consistently reports, native women have a difficult time establishing their property rights at all, married or not. How are their rights enhanced?

Pressing on, I asked officials of the Department of Indian Affairs and Northern Development for clarification. They referred me to Chief Negotiator Tom Molloy, whose reports caused my concern in the first place. I can only conclude that no one really knows the truth behind some of these sweeping statements, and I suspect that native women in Nisga'a are reluctant to speak up and speak out because of fear that their disputed rights will not be resolved in their favour.

On that point, Wendy Lockhart Lundberg has written, saying that after she spoke up on a previous bill, Bill C-49 dealing with land management, she received calls of a threatening nature. She said, when she was invited to make a presentation to the committee on Bill C-49, that when she returned home, she had received a disturbing phone call from a male member of the Squamish Indian band. This individual questioned her motives and methods in appearing before the committee. The phone call was of such a nature that she reported it to the RCMP.

• (1510)

Ms Lockhart Lundberg applied to appear before the committee but was not called as a witness. I ask that that be looked into because, as a British Columbian, she was on my list of proposed witnesses on this issue. She reports that she, too, had trouble finding out about the rights of women under this treaty. She said that as a member of the Squamish Nation she thought it was important to be knowledgeable. She read everything she could. I shall read from her written submission to the committee, because she was not called as a witness. She said:

After reading the material I obtained, I find that my primary concern is that the language of Bill C-9 asserts collective rights over the rights of the individual. I am concerned that this is a further erosion of native women's rights. It is ironic that self government initiatives are often referred to as "modern day treaties." I find that these initiatives do not advance native women on the path towards equality but rather they are draconian in their present form, relegating native women to the Dark Ages.

She goes on to speak of the so-called rights that enhance the rights of native women under this treaty.

With regard to Bill C-9, she said:

Although it was stated that British Columbia's Family Relations Act will determine the division of matrimonial property under Nisga'a law, I have found no reference to this statute in my reading of documents that I possess. I respectfully bring this to your attention and I would be pleased to learn in which document or under which clause of Bill C-9 reference to the B.C. Family Relations Act is indicated.

Possibly Senator Austin could follow that up.

She continues:

If, indeed, the British Columbia Family Relations Act does apply to the division of matrimonial property under Nisga'a law, there will still exist what the government refers to as a "legislative gap" as regards native women's property rights for those native women whose bands are yet to negotiate treaties or remain under the Indian Act. And how, under Nisga'a law, will property rights apply to native women as regards inheritance and expropriation?

We would appreciate an answer to that question.

Ms Lockhart Lundberg also points out how infuriating it is to her to be told that the problems relating to native women's rights exist today because of the Indian Act and that ratification of treaty legislation will allow First Nation communities to address this issue. She said:

I was, in fact, stunned to hear members of parliament, non-native women, advance the same argument. I question their logic. Why would these parliamentarians, whose rights are *enshrined* —

— because they are non-native —

— promote laws that will require and force native women to *fight* for their rights?

Ms Lockhart Lundberg is not the only one confused by this, which is why I support the position of the Honourable Willard Estey, constitutional expert and former Supreme Court justice, who has warned us that the ratification of this bill at this time "could destabilize the legal framework on which the Canadian nation is built." That is a warning we must heed, particularly when the law is not transparent. No one in this chamber can say that Bill C-9 and its impact on Canada, British Columbians and the Nisga'a is transparent.

I also received a letter from Mrs. Isabelle Dulmage. I believe that other members of this chamber, including Senator Austin, should have copies of it. Mrs. Dulmage said:

Any country that sets up groups of people (nations) in pockets that have powers beyond that of provincial and federal governments is heading down the road to trouble.

That is her simple way of talking about paramouncy. She continues:

Native women would not benefit from the Charter of Rights and Freedoms if band elders chose to ignore it.

I will read now a letter from a veteran, Sue Ward, who is the wife of a former MLA from Granisle, B.C., a former mining town. She expresses her deep concern that other people in the area do not know what the impact will be on them, saying the following:

Why are we afraid to demand a level playing field? When a newspaper poll was taken in Smithers the citizens of its circulation voted overwhelmingly against the Nisga'a. But meetings were never held with the general public. Nor have they been. Only in Friendship Centres and Band Halls.

She warns:

Mark my words, this great land is going to be divided and once divided, we'll be conquered by sources greater than either of us.

We run scared because it seems that no one in either Government is on the side of the people.

This is the fear that grows out of uncertainty and legislation that is confusing and not transparent.

Patrick Brabazon, who contacted me by e-mail, is concerned that if the bill is ratified and subsequently found unconstitutional, the results will be chaos and possibly violence. He said:

My concern is that should the court rule that the Nisga'a final agreement is a constitutional amendment and thereby render the ratification void, the resulting political acrimony will cause our province a great deal of harm. This harm could be avoided, or at least alleviated, by a reference to the Supreme Court of Canada. However, since the government of the day has not chosen to take this approach the only hope left is for the Senate to delay passage of the bill until the court has decided.

I will now read a letter from Surrey that touches on a theme which has existed in British Columbia since we joined Confederation in 1871:

If a Nisga'a-like treaty was about to be imposed on Ontario and Quebec (and, in the long run, the whole of Canada) we more than likely would have witnessed an entirely different attitude during the debate in the house.

That is a British Columbia view that we hear on this and other legislation.



I received as well an e-mail from Don Newman, I believe from Vancouver. He says:

Most Canadians and British Columbians want a fair and honourable treaty with the Nisga'a that would include appropriate land and resource rights, up front cash payment and a municipal level of government; however, Canadians did not expect the Nisga'a to have nation status.

He goes on to say:

Our present Constitution equally divides the totality of legislative powers between the federal and provincial government. The Nisga'a third order of government —

Senator Austin may wish to avoid that phrase, but it is used throughout this debate. Mr. Newman continues:

Thus if the treaty is passed in its present form it is unconstitutional.... Thus I appeal to members of the federal parliament to amend the Nisga'a Agreement to give the Nisga'a only a municipal level of government, give them treaty but not nation status and preserve our present Constitutional federal and provincial division of legislative power.

Betty Eckgren of Victoria writes:

One does not need to have a Ph.D. in Political Science to realize that the Nisga'a Treaty would do serious and irremediable damage to Canada, setting up a new level of government far more powerful than that of municipalities. It would be divisive and weakening to our national unity.

A writer from Surrey says:

Good on the Senate committee for taking a good long, analytical look at the Nisga'a Treaty. It is more than the Liberal M.P.s were prepared to do.

This letter outlines the problem of overlapping claims that Senator St. Germain has raised, the setting up of a separate nation within our country, and the fact that there are 50 treaties to be settled.

It is interesting that in this debate money is not discussed. On the streets, we hear that it is costing too much money and that we are giving away too much land. The only people who have complained to me about the resource stipulations in this treaty are other First Nations. For example, when the Fisheries Committee visited some native communities in B.C. last week, we were told that the fisheries provisions in this bill will impact negatively on their constitutional right to fish for ceremonial purposes.

Another letter from Vancouver says:

...it is a good time to remind everyone not to forget the practical application of good intentions "gone-bad" as per the Musqueam incident.

You will remember that the Musqueam people who had signed leases found their leases assigned, without their knowledge or consent, to the band by Indian Affairs and they faced lease increases of up to 7000 per cent.

Contrary to what I have just said, this letter from Burnaby does complain about money.

• (1520)

The Sutherlands say this is just the beginning of another taxpayer burden.

At present it is difficult to keep up with taxes, this will only add to it. Thank you for listening to us.

This is a letter from West Vancouver, and it quotes a good friend of ours in B.C., a government negotiator and bureaucrat.

**The Hon. the Speaker *pro tempore*:** Honourable Senator Carney, your allotted 15 minutes of speaking time has elapsed. Do you request leave to continue?

**Senator Carney:** Yes.

**The Hon. the Speaker *pro tempore*:** Is leave granted, honourable senators?

**Hon. Senators:** Agreed.

**Senator Carney:** Honourable senators, I will end with the one letter I received supporting this agreement. Robin Dodson, a bureaucrat who is now with the treaty negotiations, is quoted as saying:

The point of negotiating treaties from a government perspective...is to replace constitutionally protected but largely undefined aboriginal rights with a set of constitutionally protected, agreed and very well-defined treaty rights.

The West Vancouver correspondent comments:

This is an amazing way to 'move ahead' by using manipulation, assertions, oral statements, myths and wishful thinking as a basis for treaty negotiations.

Here is a letter from Katie Eliot of Richmond. She writes:

The current Nisga'a Agreement creates a third level of government and, as such, is in fact an amendment to our Constitution. This legislation must not be pushed through without proper debate and due regard for all citizens of this country. Many Nisga'a people themselves do not like this current Agreement.



Ms Eliot asks for a provincial referendum, which I am not suggesting.

Honourable senators, I have so many letters that I must await another opportunity to read them into the record. I promised that I would end with a letter supporting the Nisga'a agreement. Obviously there is more support than one letter, but from my office this is the only one. This is from Roy Dagneau of Salmon Arm.

As I am most definitely in favour of bringing about an early and equitable settlement of the legitimate claims of First Nations people —

— Mr. Dagneau is referring to a pamphlet sent by Preston Manning of the Reform Party —

— I find the content of your pamphlet at odds with reason and I find the general tone of the style and suggestions to be inflammatory and provocative.

He rejects the referendum by saying:

Where a vast majority will vote on the rights of a minority, referenda are certainly unjust and anti-democratic.

Honourable senators, thank you for listening to me. Thank you for listening to British Columbia. I hope to bring other mail to you to express the concerns of others. The point of doing this instead of talking about self-government and constitutionality is the fact that there is so much confusion over this issue. There is confusion and concern in British Columbia, and we must keep that in mind.

**Hon. Dan Hays (Deputy Leader of the Government):** Honourable senators, the next speaker on this side is Senator Sibbeston. I am not sure whether leave is required, but perhaps he could begin his remarks today and continue when this order is called at the next sitting.

**Hon. Nick G. Sibbeston:** Honourable senators, I am pleased to speak today in support of the Nisga'a bill. For me it is a very emotional matter to see a group of aboriginal people obtain a land claims agreement or modern treaty. It has been a long road and a big struggle for the Nisga'a. It is a credit to them and a credit to Parliament and to our country that such a claim as this can happen.

Honourable senators, I first heard of the Nisga'a people and their claims when I was a younger man attending law school. In my study of "native rights," as it was then called, I came across

the *Calder* case, which was a landmark case in the Canadian legal system on aboriginal rights. In this case the Nisga'a people, represented by Thomas Berger, brought a case against the Attorney General of British Columbia for a declaration that "Aboriginal Title for certain lands in The Nass Valley had never been extinguished." The Supreme Court then reviewed the cases on the subject and referred to a very famous case in the United States, *Johnson v. McIntosh*. It outlined the law as it then was, being:

...that on discovery or on conquest, the aborigines of newly-found lands were conceded to be rightful occupants of the soil with a legal as well as a just claim to retain possession of it and use it according to their discretion.

This was the view of the United States court and it was adopted by the Supreme Court at the time.

Justice Judson stated that any Canadian inquiry into the nature of Indian title must begin with the 1888 *St. Catharine's Milling* case, which recognized Indian title as being a "usufructuary" title, which then was described as a right to use the land for hunting and fishing but which title was vested in the Crown. The court recognized the existence of aboriginal rights in part stemmed from the Royal Proclamation of 1763, which stated the British policy of dealing with aboriginal peoples in North America and the general recognition that:

...when settlers came, the Indians were there, organized in societies and occupying the land as their forefathers had done for centuries.

This is what Indian title meant then. Obviously, the discussion and the demarcation of aboriginal rights since those dates have advanced.

The *Calder* case was clear on the existence of aboriginal rights but was split on whether those rights were extinguished by government action up to that time. The *Calder* case was instrumental in changing government policy because, a few years earlier, in 1969, former prime minister Trudeau had cast some doubt on the notion of aboriginal title and whether Canadians would follow a policy to recognize such rights. In a speech that he gave in Vancouver, Mr. Trudeau said:

It's inconceivable, I think, that in a given society one section of the society have a treaty with the other section of the society.

However, "aboriginal rights" really means, "We were here before you. You came and took the land from us and perhaps you cheated us by giving us some worthless things in return for vast expanses of land and we want to reopen this question." Mr. Trudeau then said, "Our answer is no."

That was former prime minister Trudeau back in 1969. Fortunately, because of the *Calder* case, the pendulum has swung the other way, to recognize and define aboriginal rights as we know them today.

Since the early 1980s, self-government, as one of the aspects of aboriginal rights, has been a pressing issue for aboriginal peoples and for Canadians at large. The effort of aboriginal people to assert their inherent right to self-government has always existed as part of their aboriginal rights. In 1990, in *Sioui*, the Supreme Court of Canada gave credence to this view, citing with approval a 1983 U.S. decision that referred to Great Britain's policy of regarding Indian nations inhabiting the territory "as nations capable of maintaining the relations of peace and war, of governing themselves under her protection." The Supreme Court of Canada commented in *Sioui* that the British Crown had a policy of intervening as little as possible in the autonomy exercised by aboriginal people over their internal affairs.

In 1982, a significant constitutional amendment was made, resulting in the inclusion of section 35 in our Constitution. This section recognized and affirmed existing aboriginal treaty rights. I was part of the Government of the Northwest Territories that was present at those constitutional conferences which amended the Constitution and added these provisions.

A question then arose as to whether this section included a right to self-government. The Penner report, a report of the Special Committee on Indian Self-government, received unanimous party support in 1983. It concluded that First Nations governments might already hold implicit legislative powers of self-government protected under section 35. The report stated:

Self-government would mean virtually the entire range of law making, policy, program delivery, law enforcement and adjudicative powers would be available to the Indian First Nation government within its territory. It would include full legislative and policy making powers on matters affecting Indian people and full control over their territory and resources within the boundaries of Indian land.

Former prime minister Trudeau, at a meeting of first ministers on aboriginal constitutional issues on March 9, 1984, stated that the treaty-making process and the land claims process had the same goal — the transformation of uncertain, ill-defined aboriginal rights protected by section 35 into clearly stated, justifiable written rights. The official response of the government to the Penner report, however, was that powers of First Nations must be delegated rather than recognized as implicit within section 35.

Debate suspended.

**The Hon. the Speaker:** Honourable Senator Sibbeston, I regret that I must interrupt. It now being 3:30, pursuant to the order of your Honourable House, I declare the Senate continued until Thursday, April 6, 2000, at 2 p.m., the Senate so decreed.

The Senate adjourned until tomorrow at 2 p.m.

# CONTENTS

Wednesday, April 5, 2000

	PAGE		PAGE
<b>ROUTINE PROCEEDINGS</b>			
<b>Changing Mandate of the North Atlantic Treaty Organization</b>		Sanctions Against Iraq—Government Policy.	
Report of Foreign Affairs Committee on Study Tabled.		Senator Roche .....	976
Senator Stollery .....	973	Senator Boudreau .....	976
<b>Tobacco Youth Protection Bill (Bill S-20)</b>		Report of Secretary-General—Request for Distribution	
First Reading, Senator Kenny .....	973	to Parliamentarians. Senator Roche .....	976
<b>National Defence</b>		Senator Boudreau .....	977
Need to Join with United States in Missile Defence Program—			
Notice of Inquiry, Senator Forrestall .....	973	<b>Visitors in the Gallery</b>	
		The Hon. the Speaker .....	977
<hr/>			
<b>QUESTION PERIOD</b>		<b>Business of the Senate</b>	
<b>United Nations</b>		Senator Hervieux-Payette .....	977
Kosovo—Resolution on Return of Serbian Force—		Senator Lynch-Staunton .....	977
Government Policy, Senator Forrestall .....	973		
Senator Boudreau .....	973	<b>Personal Information Protection and</b>	
		<b>Electronic Documents Bill (Bill C-6)</b>	
<b>Agriculture and Agri-Food</b>		Message from Commons. ....	977
Farm Crisis in Prairie Provinces—Support Funding to Farmers—			
Demands of Banks, Senator Gustafson .....	974	<b>ORDERS OF THE DAY</b>	
Senator Boudreau .....	974	<b>Nisga'a Final Agreement Bill (Bill C-9)</b>	
Farm Crisis in Prairie Provinces—Farm Credit Corporation—		Third Reading—Debate Suspended, Senator Austin .....	977
Effect of Support Funding to Farmers.		Senator Murray .....	980
Senator Andreychuk .....	974	Senator St. Germain .....	980
Senator Boudreau .....	975	Senator Andreychuk .....	981
Farm Crisis in Prairie Provinces—Flooding Problem		Senator Tkachuk .....	981
in Manitoba and Saskatchewan, Senator Stratton .....	975	Senator Lynch-Staunton .....	981
Senator Boudreau .....	975	Senator Grafstein .....	982
<b>United Nations</b>		Senator Beaudoin .....	983
China—Resolution on Human Rights—Government Policy.		Senator Carney .....	985
Senator Andreychuk .....	975	Senator Hays .....	989
Senator Boudreau .....	975	Senator Sibbeston .....	989





*If undelivered, return COVER ONLY to:*  
Public Works and Government Services Canada —  
Publishing  
45 Sacré-Coeur Boulevard,  
Hull, Québec, Canada K1A 0S9



CANADA

# Debates of the Senate

---

2nd SESSION

• 36th PARLIAMENT

• VOLUME 138

• NUMBER 44

---

OFFICIAL REPORT  
(HANSARD)

Thursday, April 6, 2000

---

THE HONOURABLE GILDAS L. MOLGAT  
SPEAKER



## CONTENTS

(Daily index of proceedings appears at back of this issue.)

*Debates*: Chambers Building, Room 943, Tel. 996-0193

---

Published by the Senate

Available from Canada Communication Group — Publishing, Public Works and  
Government Services Canada, Ottawa K1A 0S9,

Also available on the Internet: <http://www.parl.gc.ca>



## THE SENATE

Thursday, April 6, 2000

The Senate met at 2:00 p.m., the Speaker in the Chair.

[Translation]

Prayers.

### VISITORS IN THE GALLERY

**The Hon. the Speaker:** Honourable senators, before I call for Senators' Statements, I should like to bring to your attention a group of students in our gallery.

[Translation]

They are a group of 25 students from the Montagnais community in Senator Gill's region. They are visiting Ottawa in connection with their course. Fortunately, they have decided to include the Senate in their visit. I welcome them on behalf of all honourable senators.

[English]

### SENATORS' STATEMENTS

#### NUNAVUT

##### FIRST ANNIVERSARY CELEBRATIONS

**Hon. Willie Adams:** Honourable senators, I wish to make an announcement. Last week, on Saturday, we had a celebration in Nunavut on the one-year anniversary of its creation. I was in Iqaluit last Friday through Sunday. While I was there, I met with the Governor General and escorted her around Iqaluit. She was scheduled to be in Iqaluit for the anniversary day.

One of our former commissioners, Helen Maksagak, attended. The Governor General and Premier Paul Okalik hosted a dinner for our outgoing commissioner. We now have a new commissioner for Nunavut, Peter Imiq, who was sworn in last Saturday. At the same time we were celebrating our winter carnival, Toonik Tyme, in Iqaluit.

The Governor General's trip continued up to the High Arctic, to Pangnirtung, Pond Inlet, Grise Fiord, and from there up to Repulse Bay and Rankin Inlet. Honourable senators, I wish to congratulate the Governor General for making her trip up to Nunavut last week.

### YOUTH MANIFESTO

**Hon. Dan Hays (Deputy Leader of the Government):** Honourable senators, I am rising today to remind all members of this house that a very special ceremony will be held here on Monday next, April 10, at 9:30 a.m.

The Speakers of the Senate and the House of Commons, as well as the Deputy Prime Minister, the Honourable Herb Grey, and Mrs. Ndèye Fall, the UNESCO representative to Canada, will be receiving on behalf of the Parliament of Canada a document that has been drafted by young people from all over the world, the Youth Manifesto.

[English]

This historic document is a declaration of hope and fellowship, written by the youth of the world, as we enter the new millennium. The ceremony of the presentation of the Youth Manifesto will be televised on CPAC and will take place in the company of more than 150 students who are attending the fourth session of the Forum for Young Canadians.

In fact, honourable senators, these students will be occupying your seats. Nonetheless, it is important that senators be present to witness this momentous event. The Parliament of Canada is the first national assembly in the world to undertake this follow-up initiative after the World Parliament of Children in Paris last autumn. Seats will be placed in the central aisle of this chamber for your use. I hope that many honourable senators will be able to attend this important ceremony.

### SPEECH ON NISGA'A FINAL AGREEMENT

**Hon. Pat Carney:** Honourable senators, yesterday I read into the Senate record some of the letters and e-mails that were sent to the Senate through my office from some British Columbians who are concerned with the provisions of Bill C-9, dealing with the Nisga'a Final Agreement. One of the correspondents was a P.J. Brabazon. Today I received another message from this correspondent, which said simply "Thank you." I thought that those senators who listened to these concerns should like to know that their attention was appreciated.

### THE LATE SIR STANLEY MATHEWS

**Hon. Francis William Mahovlich:** Honourable senators, please excuse me for the belated recognition of the passing of a great Canadian friend and British ambassador of sport to Canada, Sir Stanley Mathews.

Sir Stanley was known as a “wizard of dribble” and in 1956, was the first winner of the European soccer player of the year award. People used to joke and say that he could turn off the bedroom light and be under the bed covers before the room became dark.

In the twilight of his career, Sir Stanley came to Toronto to play for Toronto City, a professional soccer team, and lived in Burlington. This is when I had the opportunity to find out what a great athlete he was. We met on the tennis court at a celebrity tennis match at the Inn at Manitou. Sir Stanley was 70 years old at the time — 23 years my senior. My strategy was to place my shots all over the court so that I would tire him out. What happened still to this day amazes me. Every time I tried to place the ball in a vacant area, he showed up before the ball did, which makes me believe that he really could get under the sheets before the lights turned off.

His great anticipation and instincts made Sir Stanley a professional at the age of 17. At the age of 50, he was knighted by the Queen and made his last professional appearance. At his eightieth birthday celebration, a former England captain, Jimmy Armfield, praised his skills and sportsmanship. He said:

You could kick him and do anything with him and he would never retaliate. He was a perfect example of self-discipline. I never remember a referee speaking to him once — and he didn't speak to them.

May I add that hockey today is in need of Sir Stanley Mathews' discipline.

**Hon. Senators:** Hear, hear!

**Senator Mahovlich:** Lord Wilson of Rievaulx, who was prime minister when Mr. Mathews was knighted, wrote:

Stanley Mathews was a symbol of the country which gave football to the world, and internationally a symbol of English sportsmanship in the days when that was a quality acknowledged worldwide.

His Canadian friends will always remember Sir Stanley Mathews.

## CANADA POST

### REFUSAL OF COMMEMORATIVE STAMP ON SEVENTY-FIFTH ANNIVERSARY OF UNITED CHURCH

**Hon. Lois M. Wilson:** Honourable senators, I regret the action of Canada Post in refusing requests for a stamp to commemorate the seventy-fifth anniversary of the United Church of Canada on June 9 this year. This church is a uniquely Canadian church and is the first United Church in the world, brought into being by an act of Parliament in 1925.

The United Church of Canada brought together the majority of Presbyterian, all of the Methodist, Congregationalist, Local Union, and Evangelical United Brethren in this country. Seventy-five churches in 75 countries have modelled their United Churches on ours.

The basis of union, which was what this newly created church should be about, said it should foster the spirit of unity in this country, and the church will continue on that course.

This Canadian church relates internationally in a very unique way. It works programmatically and financially with a wide variety of partners internationally, including the Roman Catholic Church, the Anglicans, the Mennonites, the Friends and the emerging independent African churches.

Through the World Council of Churches, the United Church of Canada bonds with a wide variety of ecumenical partners, as well as the partners with other historic faith communities, such as Muslim, Hindu, Sikhs, Parsis, Jews and Buddhists. It fosters unity, not division.

Honourable senators, there is a frequent reference to the United Church of Canada in the books of Margaret Atwood and Alice Munro, for instance, although not totally complimentary sometimes, but recognizing that with all its faults, it has played a significant role historically as part of the Canadian landscape.

Many Canadians would have related positively to such a commemorative stamp and I regret its omission. Failure to mark the seventy-fifth anniversary on the part of Canada Post reflects poorly on its appreciation of the history of a uniquely Canadian religious community in this country.

• (1420)

## VISITORS IN THE GALLERY

**The Hon. the Speaker:** Honourable senators, before we proceed to the next item on the Order Paper, I should like to introduce another group of students who are here today.

[Translation]

They are the Forum of Young Canadians, and were received here in the Senate this morning by the Honourable Senator Losier-Cool.

[English]

Students of the Forum of Young Canadians, on behalf of all my colleagues in the Senate, I bid you welcome.

**Hon. Senators:** Hear, hear!

## ROUTINE PROCEEDINGS

### CANADIAN INSTITUTES OF HEALTH RESEARCH BILL

#### REPORT OF COMMITTEE

**Hon. Michael Kirby**, Chairman of the Standing Senate Committee on Social Affairs, Science and Technology, presented the following report:

Thursday, April 6, 2000

The Standing Senate Committee on Social Affairs, Science and Technology has the honour to present its

#### SIXTH REPORT

Your Committee, to which was referred Bill C-13, An Act to establish the Canadian Institutes of Health Research, to repeal the Medical Research Council Act and to make consequential amendments to other Acts, in obedience to the Order of Reference of Tuesday, April 4, 2000, has examined the said Bill and now reports the same without amendment.

Attached as an appendix to this Report are the observations of your Committee on Bill C-13.

Respectfully submitted,

MICHAEL KIRBY  
*Chairman*

(For appendix to report, see today's Journals of the Senate, p. 477.)

**The Hon. the Speaker:** Honourable senators, when shall this bill be read the third time?

On motion of Senator Carstairs, for Senator Grafstein, bill placed on the Order of the Day for consideration on Monday, April 10, 2000.

#### BUSINESS OF THE SENATE

**Hon. Dan Hays (Deputy Leader of the Government):** Honourable senators, I should like to rise on this item of our Order Paper to explain, if I have leave to do so, what I anticipate will be taking place in terms of house business.

**The Hon. the Speaker:** Is leave granted?

**Hon. Senators:** Agreed.

**Senator Hays:** Honourable senators, we will sit tomorrow, Friday, which is a little unusual for us. Therefore, I will ask for leave to revert to government notices of motion later this day for purposes of giving a notice of motion to the effect that when we adjourn tomorrow, we adjourn to Monday at four o'clock. Without approval by this chamber of such a motion, we would sit in the normal course at two o'clock.

**The Hon. the Speaker:** Is leave granted to revert later this day for the purpose of government notices of motions?

**Hon. Senators:** Agreed.

**Senator Hays:** I would give notice of the motion now but I do not have it yet. When it is in my hands, at the end of the day, I will give notice of the motion.

The reason for sitting on Friday and Monday is that the government would like to give as much time as possible for debate on two important bills that are on our Order Paper, Bill C-9 and Bill C-20.

I do not want to get into debate on this matter but I did want to let honourable senators know that that is the reason for the government not moving the normal adjournment that we have when we sit on Tuesday, Wednesday and Thursday.

There is also the likelihood that next week a motion by the government to allocate time on Bill C-9 will be introduced.

**Some Hon. Senators:** Oh, oh!

**Senator Hays:** If that takes place, notice will likely be given early in the week. Debate on it will occur next Wednesday, which, for purposes of organizing committee work and the Senate's business at that time, would mean that Wednesday would not be a short day but, rather, a normal sitting day. In other words, we would sit at two o'clock and perhaps later in the evening.

Honourable senators, that is my only purpose in rising. I would be happy to deal with questions to signal to you what I expect will happen so you can better order your affairs.

**Hon. Noël A. Kinsella (Deputy Leader of the Opposition):** Honourable senators, we always thank the Deputy Leader of the Government when he shares with us, for planning purposes of schedules, et cetera, the rough view of our future business.

However, I should like to correct one point for the record. The Deputy Leader of the Government said that the government will allow the senators to have so much debate, et cetera. The government does not run the Senate. The honourable senators run the Senate.

**Some Hon. Senators:** Hear, hear!



**Senator Hays:** Honourable senators, I agree with Senator Kinsella. I will scrutinize the record carefully. As Deputy Leader of the Government, I have a role on behalf of the government, and that is what is behind the statement I made about future business. This is a responsibility of the Leader and the Deputy Leader on this side. Obviously, the opposition have their role to play, and they play it very well. They represent a group that has seats in both Houses. We on this side represent a group with seats in both Houses. It happens that we have the most members in the House of Commons and therefore form the government.

I do not want anyone to be disabused here. I am not confusing the Senate with the government or any of us on this side with the government, with the sole exception of my colleague to the left, and I emphasize to the left, Senator Boudreau.

**Senator Kinsella:** He wants to go to the House of Commons.

## CANADA-EUROPE PARLIAMENTARY ASSOCIATION

REPORT OF CANADIAN DELEGATION TO THE ORGANIZATION FOR SECURITY AND COOPERATION IN EUROPE PARLIAMENTARY ASSEMBLY STANDING COMMITTEE MEETING IN VIENNA, AUSTRIA

**Hon. Jeremiah S. Grafstein:** Honourable senators, I have the honour to table in both official languages the report of the Canadian Delegation of the Canada-Europe Parliamentary Association, OSCE, to the Organization for Security and Cooperation in Europe Parliamentary Assembly (OSCE PA) Standing Committee Meeting in Vienna, Austria, January 13 and 14, 2000.

## NATIONAL FINANCE

NOTICE OF MOTION TO AUTHORIZE COMMITTEE TO APPLY DOCUMENTATION ON STUDY OF EMERGENCY AND DISASTER PREPAREDNESS FROM PREVIOUS SESSION TO CURRENT STUDY

**Hon. Lowell Murray:** Honourable senators, I give notice that at the next sitting of the Senate I will move:

That the papers and evidence received by the Subcommittee on Canada's Emergency and Disaster Preparedness in the First Session of the Thirty-sixth Parliament be referred to the Standing Senate Committee on National Finance for the completion of the study.

[Translation]

## QUESTION PERIOD

### ACADIAN NATIONAL HOLIDAY

OMISSION OF NOTIFICATION ON CANADIAN CALENDAR

**Hon. Gerald J. Comeau:** Honourable senators, could the minister tell us why, for the second year in a row, the government

has neglected to include the Acadian National Holiday in its calendar of official events? June 24, Saint-Jean-Baptiste Day, is, however, deemed worthy of mention in the Canadian calendar.

Given his Acadian origins, Minister Boudreau ought to be offended by this omission. Do we have his commitment today that he will ensure it does not happen again?

[English]

**Hon. J. Bernard Boudreau (Leader of the Government):** Honourable senators, while I am not specifically familiar with the matter to which the honourable senator refers, I certainly sympathize with the sentiment. It is a sentiment that I will convey to the appropriate authorities.

[Translation]

• (1430)

**Senator Comeau:** Honourable senators, I hope that the Leader of the Government in the Senate will lend a sympathetic ear to my question. I would like the authors of the calendar to forget the attitude often expounded by the Quebec separatists, who want to give the impression that there are no Acadians in the other provinces of Canada.

I would remind you of the comment by Suzanne Tremblay in the other House, who said: "Ah, those people are finished. There aren't any more of them." I assure you that the Acadians exist and are here to stay. Could the Leader of the Government in the Senate remind his colleagues in cabinet and departmental officials not to forget us?

[English]

**Senator Boudreau:** Honourable senators, I certainly have no hesitation in joining with the honourable senator in conveying that message, both on this occasion and in the future.

## HUMAN RESOURCES DEVELOPMENT

GROWTH OF EMPLOYMENT INSURANCE FUND—  
DISBURSEMENT OF SURPLUS FUNDS

**Hon. Terry Stratton:** Honourable senators, my question is addressed to the Leader of the Government in the Senate. It would appear that the EI surplus is now reaching close to \$35 billion and that it has grown by close to \$7 billion this last fiscal year. Can the Leader of the Government in the Senate verify those numbers? Are they accurate?

**Hon. J. Bernard Boudreau (Leader of the Government):** Honourable senators, the honourable senator will appreciate that I do not have those figures at hand. However, I will take note of his question and provide a response in due course.

Obviously, there is a surplus. We are very fortunate to have a healthy surplus, which exists because our economy is performing this year as it has not done so in decades. The real rate of growth in our country and the number of jobs created represents a remarkable record on behalf of the government. That is good news. It is one of those problems that you prefer to have, namely, a surplus accumulating in the fund because our economy is performing so well.

**Senator Stratton:** Honourable senators, if that is the case, the government has reduced the debt by \$6 billion. Over the last two years, that \$6 billion has been paid out of the surplus of \$3 billion a year. If the government has \$35 billion in surplus in the EI fund and you deduct \$6 billion to pay the debt, where has the rest of the money gone? It is not sitting in a reserve. It has not been paid to do anything but put the government in a surplus position because you have not cut government spending.

**Senator Boudreau:** Honourable senators, I am sure the honourable senator appreciates that one must always exhibit a level of prudence with respect to the administration of the EI fund. While we rejoice in the performance of the economy at the moment, we cannot be sure that it will always perform this well. Perhaps some future government will not carry out policies that result in robust economic activity.

The Business Council on National Issues, an independent group which comments on the economy and various issues of government policy, in their letter prior to the 2000 budget, recommended that EI premiums be reduced by 15 cents for the year 2000. In fact, that occurred. In the view of one organization that has some credibility, there has been appropriate reduction of EI premiums. There was a reduction last year and there will be one next year. This is a matter that the government, and the minister involved will continue to monitor very closely.

Everyone will appreciate that EI premiums have come down and will continue to come down. We will always have a difference of opinion on how much, when and what exactly is appropriate, but to date this government has been very careful to adopt a prudent, staged and consistent practice in the reduction of premiums.

**Senator Stratton:** Honourable senators, there is \$29 billion surplus in the EI fund, plus the other \$6 billion that was used to pay down the debt. That is \$35 billion. That is not your money. It belongs to the Canadian people who sweated for it and were surcharged by your government. When will you pay that money back to them?

**Senator Boudreau:** Honourable senators, the honourable senator says that the \$6 billion that went to pay down the debt is still our money. Unfortunately, it is not. Over the years, we have

accumulated a huge debt in this country, and never in greater amounts than when the honourable senator's party was last in power. We are now required to pay that debt. Hopefully, that \$6 billion was used appropriately to pay down the debt, and hopefully we will be able to pay it down further. We have simply accumulated this debt and have left a burden on future generations. We have left that bill for our children and our grandchildren to pay. The least we can do is try pay a little of it now.

## THE ECONOMY

### INFLUENCE OF PROVINCES GOVERNED BY PROGRESSIVE CONSERVATIVE PARTY ON CURRENT GROWTH TREND

**Hon. Consiglio Di Nino:** Honourable senators, in response to my friend about where all that money has gone, certainly I think a good chunk of it went to Minister Stewart and the HRDC.

The honourable minister has given his government a certain amount of credit for the economic success that has occurred in this country over the last number of years. Would the minister at least give some credit where credit is due, namely, to the economies of Alberta and Ontario, where two Conservative governments have put into place the kind of fundamentals that have created the success for which he is taking the credit?

**An Hon. Senator:** What about Nova Scotia?

**Hon. J. Bernard Boudreau (Leader of the Government):** Honourable senators, I will try to be fair and balanced about this question. I realized a long time ago that governments probably do not deserve all the blame they receive in certain situations and all the credit they receive in other situations.

There is no question that there are other factors involved. I mentioned the story once before about the parson who, while walking by, commented to the farmer, "You have a wonderful garden," to which the farmer replied, "Yes. I did a wonderful job. I worked hard and look at my results." The parson said, "Yes, but you must remember that you did not do that by yourself, you had help. Remember that the Lord was there helping you with that garden." The farmer thought for a moment and responded, "That is true, but you should have seen it when he had it on his own!"

There are other factors involved, such as the American economy, which has done well. Other factors are involved, but there is no question that the major factor here has been the responsible, productive approach adopted by this federal government. This approach has resulted in unprecedented growth in the economy, which has yielded surpluses and given us to wonder about whether the EI surplus is too big. No one asked that question a few years ago. In fact, I do not recall anyone asking if the EI surplus was too big 10 years ago.

The honourable senator is asking legitimate questions, and they are questions we should be thinking about, but they are also very nice problems to have.



• (1440)

## FINANCE

### ACCUMULATION OF SURPLUS FUNDS—INFLUENCE OF GOODS AND SERVICES TAX AND FREE TRADE

**Hon. John Lynch-Staunton (Leader of the Opposition):** Honourable senators, as the minister is allocating credit for the budgetary surpluses, could he evaluate how much the GST and free trade have contributed to the surplus?

**Hon. J. Bernard Boudreau (Leader of the Government):** Honourable senators, to be very blunt, I do not know. However, I would say clearly that if it were not for the responsible fiscal management of this government and in particular of the Minister of Finance, Paul Martin, we would not be in the situation we are today.

Some Hon. Senators: Oh, oh!

Some Hon. Senators: Hear, hear!

**Hon. J. Michael Forrestall:** Honourable senators, that surplus, of course, would twin Highway 101 and buy the fleet of helicopters we have been awaiting on for 10 years. One would not even notice the dent in the funds. I draw to the minister's attention another tragic, near-fatal accident on Highway 101 just yesterday.

## UNITED NATIONS

### KOSOVO—RESOLUTION ON RETURN OF SERBIAN FORCE—GOVERNMENT POLICY—REQUEST FOR ANSWER

**Hon. J. Michael Forrestall:** Honourable senators, is the minister able to respond to my questions of yesterday with respect to Canada's position about returning Serb forces to Kosovo. Will Canada continue to support that policy?

**Hon. J. Bernard Boudreau (Leader of the Government):** Honourable senators, I am not in a position to give any more specific an answer than I did yesterday. I have asked my staff to contact the office of the minister, but we have not yet had a response. I will have to relay to the honourable senator, perhaps over the next couple of days, the specific answer from the minister.

## CANADIAN BROADCASTING CORPORATION

### NOVA SCOTIA—EFFECT OF PROPOSED CUTBACKS ON EMPLOYEES IN HALIFAX

**Hon. Donald H. Oliver:** Honourable senators, my question is to the Leader of the Government in the Senate. Earlier this year, I asked him a question about jobs following an announcement that the Royal Bank was eliminating several positions in Halifax. I now have another question to ask about jobs, this one regarding

the CBC's intention to drop local news and cut 500 jobs. One of the cities to be included in these job cuts is Halifax. The story says:

CBC television is headed towards a radical overhaul of its local and regional programming — changes that will mean the elimination or downsizing of stations across Canada and the loss of up to 500 jobs.

How many of those jobs will be in Halifax and what if anything is the minister doing to ensure that we do not lose valuable high-paying jobs in this city once again?

**Hon. J. Bernard Boudreau (Leader of the Government):** Honourable senators, I thank the Honourable Senator Oliver for that question. I appreciate his concern regarding the loss of any single job in Halifax, the city where we both live.

With respect to the specific plans of the CBC, I am not in a position to indicate in detail to the honourable senator what those plans would be at the moment. I will certainly make inquiries and will give as much information in the most specific terms I can with respect to any plans that the CBC may have for changing its structure or, indeed, downsizing in Halifax.

We would, of course, regret any significant change in the CBC's operations in Halifax. The quality of those operations has been without parallel in the country. I may be a little prejudiced about that, but I think they have done extremely well with the productions and personnel they have in Halifax. I would very much regret seeing significant changes in the present structure.

I must add that while we regret and sympathize with the loss of a single job in any industry, anywhere, the city of Halifax, in terms of its unemployment rate, has done very well lately. It continues to show signs of robust growth. Specifically, new employers have come to the area and have seen tremendous success and growth in that city. For that, we should be very grateful.

## TRANSPORT

### PROPOSED INCREASE IN NUMBER OF DRIVING HOURS FOR TRUCK DRIVERS

**Hon. Mira Spivak:** Honourable senators, there has been a development, and I am not sure the Canadian people know about it. The Canadian government is en route to changing the national safety code governing trucking regulations to increase the numbers of hours that truckers can legally drive every week from 60 hours to 84 hours, even higher under special circumstances.

Transport Canada's legal department is preparing the new hours-of-service standard that was adopted last November by the Canadian Council of Motor Transport Administrators, which is made up of federal, provincial and territorial officials. This means that truckers can drive their mammoth rigs having been on the job for 80 hours or more in a seven-day period.



Honourable senators, parent groups, industry insurance representatives and citizens groups are speaking out against this change to allow more sleepless drivers on our highways — but they are not Canadians. They are Americans who do not want our sleep-impaired drivers crossing their borders.

As I understand it, Transport Canada will not be holding consultations on this process. They are leaving that to the provinces.

Why is the Government of Canada backing an 84-hour work week for truckers? Will the Leader of the Government in the Senate use his good offices to ensure that federal officials are instructed to conduct full public consultations on this very important matter?

**Hon. J. Bernard Boudreau (Leader of the Government):**

Honourable senators, I thank the Honourable Senator Spivak for bringing this matter to the floor of the Senate. As she knows, commercial driver hours are regulated federally under the Motor Vehicle Transport Act, which involves motor carriers moving interprovincially. Within a given province, the regulations — I do not profess to be an expert in this area — are controlled by the provincial regulators.

My notes indicate that options for review of the existing regulations have been undertaken by the Canadian Council of Motor Transport Administrators, or CCMTA, incorporating recent studies with respect to driver fatigue. Draft options for changes will be coming forward. I am also told that the drafting of a new standard is in progress and will be followed later this year, perhaps in the summer or the fall, with public information sessions conducted by the various jurisdictions. The project group is a federal-provincial industry group under the auspices of the CCMTA.

I appreciate the concerns raised by the honourable senator, who must know that this matter is still a work in progress. I will convey those concerns to the minister and, through him, to the relevant officials.

**Senator Spivak:** Honourable senators, this “work in progress” is being codified under regulations. The regulations are moving in the direction of a greater number of hours, I think, at the request of the truckers’ associations. The proposal is for a higher number of hours than is allowed in the United States and represents a danger to the driving public. This immensely important matter is moving forward not with any parliamentary scrutiny but through regulation. The federal government is not even holding public consultations.

It is not sufficient that the honourable leader consults his notes. This is a very important safety issue and I would ask that he look into it a little deeper than simply having the department advocate its actions as being the best of all possible worlds.

• (1450)

If you do not mind, would you use your offices for what, on the face of it, looks like a very retrograde step for Canadian

safety? It is even higher than the level allowed in the United States. Please do something.

**Senator Boudreau:** Honourable senators, I do not think it will come as any surprise to honourable senators that I have not read the regulations of the Canadian Council of Motor Transport Administrators. I take the expression of concern from the honourable senator quite seriously, but I also have an indication that there is a process which continues to be followed, and is based on scientific information and scientific study.

That is not to say that I am dismissing the concerns that the honourable senator raises. I will follow up on the matter, and I will address the concerns that have been highlighted by the honourable senator to the Minister of Transport and through him to his officials. I may even review the regulations in some detail myself so that, at a future date, we will be able to discuss them in more detail.

**Senator Spivak:** I apologize for not letting your office know about this question. I did not expect you to know the details of the regulations. However, there is a principle here, that all kinds of changes take place through regulations without the scrutiny of the people’s representatives. In a case like this, I think we need to say, “Whoa, hang on.” This looks, on the face of it, quite Draconian.

**Senator Boudreau:** I will follow that up in the manner I have indicated, with Treasury Board and, perhaps more to the point, with a special committee of cabinet that deals with regulations. I would think a case like this will probably require pre-publication before any implementation, although I am not sure of that. I will certainly check that avenue of it as well.

## BUSINESS OF THE SENATE

**Hon. Lowell Murray:** Honourable senators, my question is directed to the Honourable Senator Milne in her capacity as Chairman of the Standing Senate Committee on Legal and Constitutional Affairs. My question arises from the statement made earlier this afternoon by the Deputy Leader of the Government to the effect that next Wednesday will not be a short day, but rather that the Senate will continue to sit Wednesday afternoon and probably Wednesday evening.

If that is the case, does the Chairman of the Standing Senate Committee on Legal and Constitutional Affairs intend to reschedule the meeting that had been planned for that day, at which we were to hear various witnesses, including Canada’s Chief Electoral Officer, on Bill C-2, an important piece of legislation?

**Hon. Lorna Milne:** Honourable senators, since we do have, in the Standing Senate Committee on Legal and Constitutional Affairs, a long list of confirmed witnesses who have already rearranged their businesses and lives in order to be here next Wednesday afternoon, I intend to rise at the proper time and place to ask leave to sit even though the Senate may then be sitting. It is my hope that the leadership on both sides of this chamber will confer and agree to allow us to meet.

**Senator Murray:** Honourable senators, my friend will know that hers is not the only committee that has meetings scheduled for next Wednesday. The committee that I chair, the Standing Senate Committee on National Finance, was to have sat at 5:45 p.m., to continue its study of Bill S-13, Senator Kinsella's whistle-blowing bill.

Let me then ask the Deputy Leader of the Government, and perhaps the question should also be addressed to the Leader of the Opposition as an officer of the house, what the position is with regard to requests for leave by committees to meet while the Senate is sitting.

**Hon. Dan Hays (Deputy Leader of the Government):** Honourable senators, I would require leave of the Senate to respond, in that I am not a committee chair. Perhaps the leader would like to venture a response.

**Senator Murray:** Honourable senators, it is a serious question that I am putting to the Deputy Leader concerning house business, and I think it is perfectly proper for me to ask the question and perfectly reasonable for me to expect an answer.

**The Hon. the Speaker:** Is leave granted for the honourable deputy leader to respond?

**Hon. Senators:** Agreed.

**Senator Hays:** Honourable senators, on Wednesday next, the following committees have scheduled meetings: Legal and Constitutional Affairs, on Bill C-2; Foreign Affairs, on Bill S-18, the child-soldier legislation; Banking, if they receive Bill S-19, amendments to the Canada Business Corporations Act; Transport, on Bill S-17, amendments to the appropriate legislation concerning marine liability, and, as Senator Murray has mentioned, National Finance.

The simple answer, of course, is to have agreement from the opposition to deal with Bill C-9 as we hope. In any event, that is not something I expect, nor should honourable senators object to my putting that position, because that is what gets us where we are.

There should be room for some committees to meet while the Senate is sitting, but it will be a matter for us to decide. If one committee is meeting, I suspect that that is tolerable. If two or more committees meet, then it becomes an issue that we have discussed in this chamber many times — committees meeting when we are dealing with important business here. If things go as I have suggested, we will be dealing with Bill C-9, and whether or not the house should abridge the time within which we deal with that bill is an important matter. We must be very careful. Hopefully, committee chairs will be able to carry on with their work without being inconvenienced too much, although I acknowledge that this will inconvenience them.

However, Monday is available, for instance, for committee meetings. We traditionally schedule witnesses for Wednesday because of our practice, and I gave the notice today of what I expect will happen so that it would not be a surprise next week.

Hopefully meetings can be rescheduled. Monday might be a day available for committees, and perhaps tomorrow. In any event, that is the best answer I can give.

**Senator Murray:** Honourable senators, always remembering that leave means unanimous consent and that the matter is not entirely in the hands of my friend, do I understand his position to be that, as far as the government is concerned, they would give leave for one committee to meet while the Senate is sitting but not for more than one committee? If so, on what basis will he select the lucky committee?

**Senator Hays:** Honourable senators, normally we see these as requests for leave. They can be requested pursuant to motions. I gather that Senator Milne had in mind that she would give a notice of motion requesting permission of the whole Senate to meet even if the Senate is sitting. That would be a debatable motion, as I read the rules. When it comes time to debate that motion, perhaps we will need to assess how many committees wish to meet. Obviously, Senator Murray would take the position that, if one committee is to be selected, it should be the Standing Senate Committee on National Finance. Senator Milne would say it should be the Standing Senate Committee on Legal and Constitutional Affairs.

I made the suggestion because, as a practical matter, a single committee could meet without causing a problem, but if five committees were to meet, then the Senate could not function. That is why I suggested one, or perhaps two. If a motion is moved, or if leave is requested to deal with it without a motion being moved, then we will decide it at the time.

**Hon. John Lynch-Staunton (Leader of the Opposition):** Honourable senators, we are getting beyond Question Period, but in all fairness to the committees, we should know what the intentions of the government are. There are witnesses waiting to testify next Wednesday, I assume. As far as we are concerned, unless there is a very valid reason, committees should not meet while the Senate is sitting.

• (1500)

## INTERGOVERNMENTAL AFFAIRS

### VISIT OF PREMIER OF QUEBEC TO FRANCE—SPEECH OUTLINING PROVINCIAL GOVERNMENT'S POSITION ON REFERENDUM CLARITY BILL—GOVERNMENT POSITION

**Hon. Noël A. Kinsella (Deputy Leader of the Opposition):** Honourable senators, the Leader of the Government in the Senate is concerned that the first minister of the province of Quebec is speaking today to members of the Senate of the French Republic. Among the matters that he will be discussing with the President of France, Jacques Chirac, is his view that Bill C-20 is null and void.

Will the Government of Canada be expressing its view on the views expressed by the Premier of Quebec, both to the President of France and in the speech he will deliver today to the members of the Senate of the French Republic?



**Hon. J. Bernard Boudreau (Leader of the Government):** Honourable senators, with regard to the first part of the honourable senator's question, I am always concerned when the Premier of Quebec rises to make a speech.

It would be hope beyond belief that, if we presented this bill, Premier Bouchard would embrace it and say, "Yes, I believe Bill C-20 is a legitimate and valid exercise of the federal jurisdictional prerogative." It is no surprise to us that Premier Bouchard does not like Bill C-20. In fact, he has said so publicly on a number of occasions, and will say so to members of the French Senate. Predictably, he will say the same thing on every public occasion at which he is given the opportunity. We simply do not agree with him. We think he is wrong. There is no secret that we believe that his comments with respect to that legislation are clearly wrong.

## FOREIGN AFFAIRS

### FRANCE—POSSIBLE ENDORSEMENT OF SECESSION BY QUEBEC—GOVERNMENT POSITION

**Hon. Noël A. Kinsella (Deputy Leader of the Opposition):** Honourable senators, if the Government of France gives international recognition to a seceding Quebec, would that be a cause of concern to this government?

**Hon. J. Bernard Boudreau (Leader of the Government):** Honourable senators, the situation set out by the honourable senator is hypothetical in the extreme. If it were to happen today, or two years from now, or if it had happened last week, or two years ago, and regardless of the country, it would be a matter of concern. We firmly believe that it will never happen and that the people of Quebec will never endorse separation from Canada, as long as they are given a clear question to answer. I say that with the greatest of confidence. I do not think we will ever face the hypothetical situation that the Deputy Leader of the Opposition raises.

## REFERENDUM CLARITY BILL

### COMMENTS BY PREMIER OF QUEBEC DURING VISIT TO FRANCE

**Hon. Noël A. Kinsella (Deputy Leader of the Opposition):** Honourable senators, the Premier of Quebec is quoted in *The Globe and Mail* of today as having said to President Jacques Chirac that his government, namely, the Government of Quebec, has had this whole issue on the back burner for the past four years, and it is only because this ill-considered piece of legislation has been brought forward that the matter is returning to the forefront.

**Hon. J. Bernard Boudreau (Leader of the Government):** Honourable senators, earlier in my life I was accused of being gullible. I do not know if I would ever have bought that story.

The Premier of Quebec is saying, "If they had not mentioned it, we never would have mentioned it. We would never have thought about separation again. The separatist movement in Quebec would never have arisen if those people in Ottawa had not mentioned it." This defies credibility.

A statement such as that from Premier Bouchard demonstrates better than anything we are likely to say in this assembly how desperate he is, having realized that the people of Quebec will not follow him out of Canada.

## FISHERIES AND OCEANS

### UCLUELETTOFINO, BRITISH COLUMBIA—REQUEST FOR REPLACEMENT OF LEASEHOLD FISH LICENSING SYSTEM

**Hon. Pat Carney:** Honourable senators, my question is addressed to the Leader of the Government in the Senate.

Last week, some members of the Senate Fisheries Committee visited some of our coastal communities to identify some of the problems they have with federal fisheries policy. The group included the Chair of the committee, Senator Comeau, my B.C. colleague Senator Perrault, Prince Edward Island Senator Perry, and Senator Mahovlich, who did more to thaw east-west relations than anyone since the Vancouver Canucks were in contention for the Stanley Cup. It was a terrific group and because of the "Big M" we were particularly well received.

One specific issue was raised with us of immediate concern to the people in Ucluelet-Tofino. They are trying to organize a community licensing scheme with aboriginals and non-aboriginals — the band and the community — so as to gain access to their fishery, which is now allocated under a system whereby a dentist in Toronto could be a licence holder. They want to replace these absentee leaseholders with a community fishing licence.

They have been unable to get any response from the Department of Fisheries and Oceans. Because they are a volunteer group and the fishing season is coming and they are experiencing burnout, they say they need an immediate reply to this issue. Could the minister use his good offices to ensure that they do receive a reply to this issue? If they do not, the consensus could break down, and there is the potential for some sort of fish war on the water. I would ask the minister to expedite his response.

**Hon. J. Bernard Boudreau (Leader of the Government):** Honourable senators, I thank the honourable senator for her question. I certainly agree with her that the members of the Fisheries Committee have done great work in dealing with some very difficult issues across the country. I must confess I am a little more familiar with the situation on the East Coast than I am with that of the West Coast. However, I am familiar with the particular area to which the honourable senator refers. I have been there, and it is absolutely magnificent.



I will, of course, take the honourable senator's inquiry and bring it to the attention of the minister and his department and ask for a response in due course. I will convey to the honourable senator the reply.

### DELAYED ANSWER TO ORAL QUESTION

**Hon. Dan Hays (Deputy Leader of the Government):** Honourable senators, I have a response to a question raised on March 28, 2000 by Senator Robertson regarding the possibility of lowering thresholds for cities to achieve metropolitan status.

### STATISTICS CANADA

#### POSSIBILITY OF LOWERING THRESHOLD FOR CITIES TO ACHIEVE METROPOLITAN STATUS

(Response to question raised by Hon. Brenda M. Robertson on March 28, 2000)

1. Statistics Canada consults its data users prior to every Census (every 5 years) to see whether there is any need to update any of its geographic definitions, including the census metropolitan area (CMA) definition. Consultations in preparation for the 2001 Census generated some suggestions to lower the CMA population threshold below 100,000, but there was not a clear majority for change. The definition was therefore left unchanged for the 2001 Census, and planning of the Census, as well as programs that make use of the metropolitan definition, has proceeded on that basis.

2. With respect to conformity with the U.S. definition, Statistics Canada has been liaising with the Bureau of the Census in the U.S. on the possibility and benefits of harmonizing the definitions of geographic areas in the two countries. Currently the Census Bureau is right in the middle of taking the 2000 Census and so not able to focus on this issue at the moment. Within the U.S. government there is discussion on revising their own definitions and introducing several categories of metropolitan area according to population size. We intend to pursue the potential for Canada-U.S. harmonization with the Americans as soon as possible.

3. In the meantime Statistics Canada is ready and willing to state publicly, in whatever publication or forum it is useful, which urban areas in Canada would be CMAs under two alternative U.S. definitions. Moncton would be one such area under either definition.

4. Statistics Canada is working with Industry Canada to ensure that information on urban centres of 50,000 and

above is included on their *Invest in Canada* site, and that these centres are identified as meeting the U.S. definitions of metropolitan areas.

5. Finally it should be noted that the redesignation of an urban centre as metropolitan would not in itself increase the amount of data available for that centre. We already make available all data we have about all urban centres. To increase the amount of data available for smaller urban centres, for example by increasing sample size in some surveys, could require significant additional budget allocations.

In summary, Statistics Canada feels that it cannot reopen the issue of metropolitan area definition in time for the 2001 Census. The necessary consultations, Census program adjustments, and adjustments to other programs, within and outside Statistics Canada, that make use of the metropolitan definition could not be completed in time.

However, Statistics Canada is ready and willing to identify the urban centres that would be designated "metropolitan" under U.S. definitions. In particular, it is working with Industry Canada to ensure that this information is prominently displayed on their *Invest in Canada* site, and is ready to work to the same end with any other organization engaged in attracting business to Canadian urban centres.

### BUSINESS OF THE SENATE

**Hon. Noël A. Kinsella (Deputy Leader of the Opposition):** Honourable senators, it is usually at this time that there is an exchange, when it is necessary to have one, on how the business of the house will proceed over the next few days. We already have before us, and honourable senators are considering, the discussion raised by Senator Murray during Question Period about the suggestion of the Deputy Leader of the Government with regard to the sitting of the Senate Wednesday next. Some committees that have planned business and have lined up witnesses to appear before them assuming they would meet when the Senate rises at 3:30 p.m.

• (1510)

It seems to me that we should not follow the route indicated by some honourable senators, that of classifying issues that come before this place under those of utmost gravity and concern and those of a lower class. I submit that the same principle applies to committees. How will we say that some committees can sit because their issues, for whatever reason, are more grave than the issues before another committee?

Honourable senators, this side would have a great deal of difficulty in granting leave. The principle we have used in granting leave for committees to sit even though the Senate is sitting is when a minister is to appear as a witness. We have recognized the scheduling problems of ministers as an exceptional circumstance.

Several committees next week have ordinary, regular important business. We would be hard pressed to find a reason to not continue with our practice of rising at 3:30 on Wednesdays in order that those committees may do their work, as opposed to allowing debate to continue and granting leave for committees to meet even though the Senate is sitting. That was one matter touched upon by my honourable friend, the Deputy Leader of the Government.

The other matter relates to a warning that time allocation might be brought in with reference to Bill C-9. The rules are clear. If the government decides to bring down the guillotine with a government measure, a notice of motion will be given to that effect. There will be a debate on that motion. If the motion succeeds — and to succeed, it requires the majority of senators — the guillotine will be in place on that matter.

Honourable senators, this is the first time since I have been in this place that we have received a warning of the guillotine. My understanding, according to the rules, is that negotiations take place. Indeed, they have been ongoing between the two sides. I am of the view that I left the discussions with a counter-proposal. I am awaiting the reaction to the counter-proposal and would prefer that these negotiations continue.

If these negotiations break down, then, pursuant to the rules, the deputy leader can rise and say, "We have had negotiations, but they broke down." I am clearly of the view that I made a counter-proposal while in the midst of negotiations. It is with the Deputy Leader of the Government. I do not think the rules provide for a warning of the guillotine.

**Hon. Dan Hays (Deputy Leader of the Government):** Honourable senators, I am pleased Senator Kinsella acknowledges that we have been in a negotiation as that is a condition to the use of rule 39 dealing with the limitation of debate.

Each of us must interpret the status of the negotiation in which we find ourselves. My interpretation of the status of the negotiation is that we do not have an agreement that I can accept as meeting the expectation on this side as I represent it. I will not refer to the government.

As to signalling for next week the likelihood of a difficulty on Wednesday, I am not sure, but Senator Kinsella may be saying he would rather this be a surprise — in other words, that the motion materializes with notice, as opposed to what I am doing here today. I am simply signalling members of this chamber, who all have an interest in this matter. After all, we are sitting on Friday and will be sitting on Monday, which is a little unusual for us.

Perhaps Senator Kinsella would prefer if we left these things until the very last moment.

It may well be that our negotiations will bear fruit and something will happen such that it is not necessary to have a long or regular day on Wednesday. However, I must interpret where I am at in terms of our objectives.

Hopefully our negotiation will continue. We have had a good relationship and I hope it continues. My interpretation is that we are at least three weeks apart in terms of where we should be in terms of our objective. That is why I have taken these steps to signal the chamber where I think we will be next week. Hopefully I am wrong and an agreement will be come out of our negotiation. It is my intention to leave this expectation until the latest possible date, in terms of achieving agreement.

In any event, given the alternatives of surprising honourable senators on Monday or Tuesday or letting them know today what is likely to happen, my choice is to signal today what will likely occur.

**Senator Kinsella:** Honourable senators, I thank the honourable senator for that. It assists all honourable senators if they know the state of play.

Also, it may be helpful to recall that our sitting times typically are from 2 p.m. until 6 p.m.. We stop at 6 p.m. and come back at 8 p.m. The other day, attempting to have sufficient hours in this place for debate, we did not see the clock, which caused some problems in terms of planning.

Our agenda has not been that full of government business for a period of time, and we are now looking at adding Friday, Monday and possibly the following Friday as sitting days. If we sit those three extra days and use all of the hours we are entitled to use in the run of a day, I think it might obviate the Wednesday afternoon.

My main concern is interfering with committee activities, as raised by Senator Murray. If we consider that we are adding sittings Friday, Monday and the following Friday, and if all honourable senators realize that we could sit from 8 p.m. to 12 a.m., we might get through the complete Order Paper. Many senators have been complaining to me that they have inquiries that always wind up being stood.

**Senator Hays:** Honourable senators, we will see how it goes. I am suggesting what I think will happen, not what will happen. We may find ourselves with nothing more to say come next Tuesday. If that is the case, the world will unfold as Senator Kinsella suggests. However, if we are still busy with our debate, it is quite possible, if not probable, that the schedule will unfold as I have suggested. Senator Kinsella indicates that the opposition would not likely support consent for a committee to sit on Wednesday if we have a regular day. It is difficult to choose, although we are here and make choices all the time, but we could choose, if we wanted, to allow some committees to sit. In any event, we must wait and see what plays out.



## ORDERS OF THE DAY

### CANADA BUSINESS CORPORATIONS ACT CANADA COOPERATIVES ACT

BILL TO AMEND—SECOND READING

On the Order:

Resuming debate on the motion of the Honourable Senator Kirby, seconded by the Honourable Senator Cook, for the second reading of Bill S-19, to amend the Canada Business Corporations Act and the Canada Cooperatives Act and to amend other Acts in consequence.

**Hon. David Tkachuk:** Honourable senators, I rise to speak on second reading of Bill S-19, to amend the Canada Business Corporations and Canadian Cooperatives Act. I was supposed to give this speech a week ago Thursday. When one has extra days and time, one adds a paragraph here and a paragraph there, so please abide with me. Much has happened in the last week and a half.

I listened with great interest to Senator Kirby's fine speech last Tuesday. I should like also to acknowledge the work of the committee under his leadership when he was chairman and the deputy chairmanship of Senator Angus and myself.

The work that the committee did on corporate governance, with particular emphasis on institutional investors and the role and work of boards of directors, was extremely good. I commend the government for following many of the recommendations the Standing Senate Committee on Banking, Trade and Commerce put forward.

• (1520)

Our committee's focus has always been on the goal of improving Canada's corporate climate to help create capacity and support Canada's search for competitiveness on the world stage, especially amongst the OECD countries.

Honourable senators, in spite of what Senator Boudreau has said about Bill C-20, I believe, and I am sure most colleagues on the Banking Committee believe also, that this is one of the most significant government bills to be dealt with in the Senate for some time. I will have more to say on this issue with respect to Bill C-20 next week, but I would reiterate that this is one of the most significant government bills to be dealt with in this Senate for some time, and it is one that the Senate is well positioned to study, because of the expertise we have built up and the institutional knowledge we have gained from previous studies.

The Banking Committee has already done much work on the potential changes to the Canada Business Corporations Act and the Canada Cooperatives Act through earlier hearings and reports. The Senate is the logical first place for this legislation to

be given what I would call "sober first thought," and I congratulate the government for having the foresight to send this bill here first.

I will cover today specifically four matters that are of concern to me before we begin our committee study of the legislation over the next few weeks. I am concerned with the issue of global competitiveness, the lack of the parliamentary review mechanisms, the general trend of devolution of parliamentary powers by the use of regulations through Orders in Council, and with some matters concerning insider liability for directors and officers of corporations.

I should like to begin my first point, regarding global competitiveness, by examining the aim of the government, as outlined by the press release, that this bill will help our corporations compete and make Canada a choice destination for headquarters of global corporations.

Honourable senators, the current Canada Business Corporations Act pales in comparison to some of the other competitive barriers faced by Canadian business. Unfortunately, this government is not doing enough to address those other barriers.

In an article in the *National Post* on April 4, there was a joint statement by the Business Council on National Issues spokesperson, David O'Brien, who is Canadian Pacific President and CEO, Jean Monty, BCE Inc. President and CEO and John Cleghorn, Royal Bank Chairman and CEO. They stated that Paul Martin's five-year reduction plan for corporate tax rates in his February budget demonstrates a "breathtaking short-sightedness and timidity." They also said that only through continuing prosperity can Canada maintain its values and key social policies. Global competition and the integration of business on a continental and world scale are leading to a post-industrial era in which Canada is extremely vulnerable. "If the government does not move quickly," Tom D'Aquino, President of the BCNI, warned, it will not be long before Canada is a "worse-off northern suburb of the USA." They called for an end to "wishy-washy half-measures" and an immediate move to "sharply lower taxes, a vigorous plan to attack the \$575-billion federal debt, and bold policies that promote world-scale Canadian companies, including banks."

In particular, not only does our tax system rely more heavily than our competitors' upon taxes that have nothing to do with profit levels, as capital and property taxes, but we have more punitive income tax rates.

Canada has not followed the lead of other nations in reducing corporate taxes, with the result that this year we will have the second highest general corporate tax rate in the world. The recent budget cuts corporate taxes by all of 1 per cent, with only a promise of further reductions between now and the year 2004. Can we continue having corporate tax rates that are 7 per cent above the OECD average for another four years?



As long as our business tax system is not competitive, other nations are more attractive places to invest and to earn income in. Capital today is highly mobile and moves more rapidly than ever, in response to actual or anticipated changes in tax policy. The business world will not stand still and wait for Canada to bring its taxes into line with those of our competitors. Business will not locate here in the hope that, one day, taxes will come down.

Similarly, our personal income tax rates make Canada a less attractive place for talented professionals and managers to earn income. We are losing our best and our brightest — that is, the people we need to compete — to higher after-tax income south of the border and across the sea. The recent budget did not go far enough to cut taxes.

Honourable senators, we must remember that the people who make decisions about where to locate their head office will consider both the tax consequences on the corporation and the tax consequences upon themselves, as individuals, as they will likely reside in the same country as the head office.

In short, the government's suggestion that these corporate law changes will make Canada a choice destination for the headquarters of global corporations flies in the face of reality because it ignores the fact that our taxes are simply just too high. There remain other challenges to be met if we are to become more competitive. For example, within the G-7, Canada has the second lowest level of research and development as a percentage of its economy.

While the government, in its most recent budget, may make impressive sounding claims about money for things like genome research and research chairs, that money will be spread out over a period of several years and it is really quite small when you compare it to the magnitude of the R&D gap with our competitors. Government money alone will not close the research and development gap so long as risk is better rewarded elsewhere.

Another challenge that we must overcome, if we are to become more competitive, is the barriers to trade within Canada. It is easier to sell goods and services to another country than to another province. We do not need to have our small domestic market further fragmented with trade barriers, such as margarine colouring laws.

If a Saskatchewan business has a problem with an American company, it can go to the NAFTA panel or to the WTO. If it has a problem with Ontario or Alberta, it is out of luck. Our internal trade agreement has no teeth, no enforcement mechanism. My colleague Senator Kelleher, who has particular expertise when it comes to WTO matters, I am sure would echo my concern.

A third example is the regulatory environment. Most small businesses would probably tell you that the way government regulates is a far bigger problem than the Canada Business

Corporations Act, although the changes that eliminate duplication are a step in the right direction.

Honourable senators, a regulatory environment that subjects business to regulations only where and when needed is vital to the creation of a vibrant and competitive economy. This government is far too fast to regulate when alternatives such as a negotiated compliance could be implemented, and regulations are rarely passed with any kind of cost-benefit analysis, either before or after they are in place.

That brings me to my second and third points: the need for a parliamentary review mechanism and the concern I have with the devolution of parliamentary powers through the use of regulation rather than legislation to regulate the business environment.

The Senate Banking Committee supports the increased scope of regulations in order to facilitate the access of businesses to quick answers and regulations that clarify and simplify the rules that govern business. However, the committee has never recommended that those regulations not be scrutinized by Parliament. A review mechanism should be mandatory and should reoccur on a regular basis. It could then be determined if repeal or adjustment is necessary to ensure effectiveness.

Many regulations are written in such complex terms that you need to be a Bay Street lawyer to read them. Far too often, small businesses are not even aware of what the regulations are until they have broken them. Small business operators do not make a habit of reading the *Canada Gazette* while they sip their morning coffee.

I will also question the officials about posting the regulations, which are awkward in this bill; not only should they be posted electronically, as you will currently find, but they should also be tabled before Parliament concurrently. We need to develop mechanisms whereby regulations are tabled in both Houses, perhaps 30 days before they are to come into effect. If deemed necessary, they could be studied in committee, and those amended in committee would obviously not come into force, but would be withdrawn with the view that, when the bureaucracy gets it right, they come back again.

A concern I have had for some time is that we are slowly abandoning Parliament. While the previous act, which was passed in 1974 or 1975, contained a mechanism to allow for a review by Parliament, that mechanism is missing from this bill.

• (1530)

More and more regulations that do not need parliamentary approval are governing what regulates our economy, and this concerns me. Perhaps it is just the way this government thinks. An example is what happened today. We will be dealing with a bill where closure will come into effect on Wednesday if we do not hurry up and pass it, when there seems to be no necessity to pass it at all. We can wait until May 3 or May 10 or May 15 to pass it. There is no national emergency awaiting us.

Honourable senators, we are being bypassed by the Langevin Block. This little issue about regulation is symbolized by big issues such as Bill C-9, on which debate has just begun. We are told that it must be out of here on Wednesday. Therefore, we have to sit extra days and extra hours because we cannot possibly debate the bill in May. However, we are given no good reason as to why it must pass on Wednesday. We should all be concerned about that.

I am also concerned about a fourth problem in Bill S-9 that will, to paraphrase a government document, impose civil liability on persons who communicate undisclosed confidential information regardless of whether a transaction occurs — that is, if you are an insider in a corporation. I am not a lawyer, so when I go through this bill, I do not know why it matters if no transaction takes place and information is released. Will it cause problems if members of boards of directors or insiders inadvertently release information that may be communicated by someone else, thus exposing them to civil liability, when no profit has been taken and no self-interest has occurred?

In order for the provisions of the bill to apply, in reference to particular amendment that I am concerned about, someone must say that information has been passed on. The government that has yet to honour its promise to pass whistle-blowing legislation is now encouraging it for the private sector. How else will anyone find out who talked to whom? Perhaps the officials appearing before the committee can allay my fears, but again, I fear that this clause will make a lot of people nervous about taking any responsible role in a corporation, which is a situation we want to avoid.

Honourable senators, I should like to reinforce my earlier comments about the role of Senate committees by talking about the ability of the Senate committee structure to produced results that have a profound effect on the actions of the executive branch. Bill S-19 is a testament to this fact. The Senate Banking Committee has undertaken studies on corporate governance and the governance of institutional investors, both on its own initiative under the previous chairmanship of Senator Kirby and its review of legislation, such as Bill C-2, the Canada Pension Plan Investment Board Act, and Bill C-78, the Public Sector Pension Investment Board Act.

It is clear that in Bill S-19 the government chose to include many of our recommendations, both minor and major, particularly those that refer to joint and several liability, rights of shareholders and residency requirements for directors. It is gratifying that Bill S-19 is reflective of the work done as it relates to the private sector.

However, the government ignores our recommendation when it comes to establishing public sector corporations. This was

apparent because the government got into trouble in this place on Bill C-2 and Bill C-78 relating to the government institution that handles the people's money. Good corporate governance and laws that satisfy business interests shareholders' interests are enacted to protect those participating in the corporation by work or monetary investment from those who would exploit the system and commit fraud on their person, company or pension plan, or deviate from good and honest business practices.

In a government, of course, money is extracted by law, and, in this country, punitively. The government, including the members opposite, saw fit to ignore many of the Banking Committee's recommendations in relation to requirements for pension investment expertise on the board of directors and the oversight by the Auditor General in relation government institutions.

In conclusion, I look forward to dealing with this legislation in committee. At the outset, I do feel this legislation is positive and goes a long way to improving the CBCA and the CCA. Let us hope after our committee deliberations that we will return to this place legislation that we can be proud of on both sides of this chamber.

**Hon. Michael Kirby:** Honourable senators —

**The Hon. the Speaker *pro tempore*:** Honourable senators, I must inform the Senate that if Senator Kirby speaks now, his speech will close debate on the second reading of Bill S-19.

**Senator Kirby:** Honourable senators, I do not intend to give a speech, just to thank Senator Tkachuk for his speech and, in particular, for reminding this chamber about the work the Banking Committee has done on the issue of the governance of public institutions. Let us hope that by continuing to keep pressure on the government, we can get it to ultimately adopt our views with respect to the governance of public institutions, as we have with respect to private sector institutions.

I also thank Senator Wilson, who is not here but who gave a very interesting speech several days ago laying out a suggested amendment to the bill. It is an intriguing idea that I hope the committee will look at seriously.

**The Hon. the Speaker *pro tempore*:** Is it your pleasure, honourable senators, to adopt the motion?

**Hon. Senators:** Agreed.

Motion agreed to and bill read second time.

REFERRED TO COMMITTEE

**The Hon. the Speaker *pro tempore*:** Honourable senators, when shall this bill be read the third time?

On motion of Senator Kirby, bill referred to the Standing Senate Committee on Banking, Trade and Commerce.



## NISGA'A FINAL AGREEMENT BILL

## THIRD READING—DEBATE CONTINUED

On the Order:

Resuming debate on the motion of the Honourable Senator Austin, P.C., seconded by the Honourable Senator Gill, for the third reading of Bill C-9, to give effect to the Nisga'a Final Agreement;

And on the motion in amendment of the Honourable Senator St. Germain, P.C., seconded by the Honourable Senator Andreychuk, that the Bill be not now read a third time, but that it be read a third time this day six months hence.

**Hon. Pat Carney:** Honourable senators, I rise on a point of order. Senator Austin is not in his seat. He has been in the habit of answering questions raised in debate. Yesterday, I asked questions related to the issue of the rights of native women. Will they be answered by the government today?

**Hon. Dan Hays (Deputy Leader of the Government):** Honourable senators, on behalf of Senator Austin, I inform you that he will be absent today and tomorrow. He will be back next week. If he follows the practice of earlier this week, he will deal with questions he has not already dealt with when he is next in the chamber.

**The Hon. the Speaker *pro tempore*:** Honourable senators, Senator Sibbeston will resume his speech from yesterday.

**Hon. Nick G. Sibbeston:** Honourable senators, I was interrupted yesterday partway through my speech, so I will briefly capsule what I said.

The Nisga'a bill before us is the result of an evolution of the views of the courts and the federal government on aboriginal rights. The 1973 Supreme Court of Canada case of *Calder* was instrumental in changing government policy. Since then, various parliamentary and government bodies — Penner is one — have studied the subject, each in their own way advancing the notion of aboriginal rights and what they entail in our country.

My comments are in support of the bill being debated, voted on and quickly implemented. I do not support the amendment to cause a six-month delay or hiatus. The Nisga'a have waited a long time. While I appreciate that the amendment is aimed at providing time to resolve the boundary overlap issue, I seriously do not think that the delay will accomplish that. The overlap matter is internal to the Nisga'a and the neighbouring First Nations, and I trust that through negotiations, through good-spiritedness, and through time this issue will be resolved. The Nisga'a bill is too important for the general good of the Nisga'a and aboriginal people of our country to delay.

• (1540)

Honourable senators, in 1986, following the federal task force report which was titled "Living Treaties, Lasting Agreements," the Conservative government indicated a willingness to discuss legislative proposals to replace the Indian Act with local self-government arrangements with individual First Nations. Federal policy, however, did not permit any major change from the municipal government model. Instead, it focused on enhanced bylaw powers and economic development.

Delegated powers, however, have never been acceptable to aboriginal peoples. Aboriginal people need the same powers as other governments to be self-determining and to have control over their lands and resources. I believe there has been an evolutionary process towards these types of powers that we see in the Nisga'a agreement.

In March 1992, a joint parliamentary report recommended the inherent power of self-government be entrenched but in a manner consistent with a view that section 35 of the Constitution might already recognize that right. In July 1992, a political accord was reached between aboriginal leaders and provincial premiers along those lines. The Charlottetown accord was rejected by Canadians in a national referendum. We do not know precisely which parts of the accord the voters rejected. Nevertheless, it shows the government thinking and the support for aboriginal self-government which has grown over the years.

The federal Liberal government has taken a very different and progressive turn in its policies on issues of aboriginal self-government than its predecessors. The Liberal Red Book pledged to act on the basis that section 35 both recognizes and affirms an inherent right to self-government. It pledged to make such changes as could be made under existing laws, proceeding on the basis that the inherent right is an existing right protected by section 35.

That view is supported by the evolving jurisprudence on section 35 rights. In 1996, in *Van der Peet*, the Supreme Court of Canada stated that the purpose underlying section 35(1) was:

...the protection and reconciliation of the interests which arise from the fact that prior to the arrival of Europeans in North America, aboriginal peoples lived on the land in distinctive societies, with their own practices, customs and traditions.

In *Regina v. Pamajewon*, the court held that, "Claims to self-government made under s. 35(1) are no different from other claims to the enjoyment of aboriginal rights." In the landmark case of *Delgamuukw*, the court urged the resolution of these difficult and complex issues through negotiated settlements, with good faith, and give and take, on all sides, as a means of achieving a basic purpose of section 35(1) — "the reconciliation of the pre-existence of aboriginal societies with the sovereignty of the Crown."



We are here today, honourable senators, because changes in the federal government's comprehensive claims policy recognize an inherent right of self-government, together with the evolution of Canadian jurisprudence in the understanding of aboriginal rights. The Nisga'a treaty is a culmination of this process. It represents a full-blown agreement in lands and resources characterized by self-government or, as Pierre Trudeau said, "...the transformation of ill-defined aboriginal rights into clearly stated, justifiable written rights."

In the Northwest Territories, there has been a number of land claim agreements — the Inuvialuit in 1984, the Gwich'in in 1992, the Sahtu in 1994, and the Inuit in the Eastern Arctic through the creation of Nunavut in 1999. These land claims agreements have been positive and have resulted in aboriginal peoples gaining ownership of lands, resources and having control over resource development, environment and wildlife through various management boards. The agreements are in various stages of implementation and development.

I wish to speak briefly about the Inuvialuit who occupy the Delta, the western part of the Northwest Territories. Since their claim in 1984, they have successfully managed their lands and resources. They have used their monies in appropriate investments and business opportunities. Today, the Inuvialuit are a driving force in the Delta region and western NWT. They have spread their investment tentacles throughout Western Canada. They have invested in all kinds of projects and businesses. They own office buildings. They have an oil and gas exploration company, regional airlines, barging and trucking companies and a multitude of businesses which provide employment for their people and others. In June 1999, the Inuvialuit completed a 30-mile natural gas pipeline from a gas field on their lands to Inuvik which now provides fuel for heating and power production.

I noticed in a recent magazine article that the Inuvialuit are offering some lands for oil and gas exploration through a bid process. In 1999, they signed \$180 million worth of contracts for exploration work on their lands. The 1998 annual report of the Inuvialuit Regional Corporation, the latest report available, outlines the success of all the various corporations as being \$8 million in profit.

Except for the Inuit people in the Eastern Arctic, self-government was not a part of the land claims to which I referred, but we have been fortunate in the Northwest Territories because we have a legislative assembly in which all peoples of the North, particularly the aboriginal people, participate. Today, Premier Stephen Kakfwi, a Dene from the Sahtu, and aboriginal people form the majority of elected MLAs.

From experience, I know what self-government is. I was an MLA for 16 years and a member of the cabinet for six years during which I was government leader for two of those years.

The process of aboriginal people achieving self-government is no different from the process of achieving responsible

government in the Northwest Territories. The history of the government in the Northwest Territories since 1970 has been to struggle for responsible government. This struggle is no different than the struggle that went on in the western part of our country when Alberta, Saskatchewan and Manitoba struggled for responsible government. The process is one of wresting control from the federal government. Nothing is simply given to people. They must fight and win responsible government. That is the way that I see things happening for the aboriginal peoples in our country.

When I came upon the political scene in 1970, the executive of the Northwest Territories government consisted solely of non-elected federal appointees. The executive was made up of the commissioner, the deputy commissioner and the assistant commissioner. The territorial council of which I became a part consisted of nine elected and five federally appointed people. Through the years, the legislative assembly became fully elected and the executive cabinet became fully elected. I had the honour of taking from the commissioner the last portfolio he held in 1986.

**The Hon. the Speaker:** I regret to interrupt you again, Honourable Senator Sibbeston. Your 15 minutes of speaking time has expired. Are you asking leave to continue?

**Senator Hays:** I wonder if I might propose that we grant 15 minutes further.

**Senator Lynch-Staunton:** No limit. This is too important a debate.

**Senator Sibbeston:** I have two more pages.

**Hon. Noël A. Kinsella (Deputy Leader of the Opposition):** As a point of order, I would like to know what the foundation is in the rules of Senate for such a motion. Either leave is granted or leave is not granted. Where does the deputy leader find the a proposal for 10 minutes or 15 minutes? I do not think he found it in the rules.

• (1550)

**Senator Hays:** Honourable senators, I do not believe there is any specific rule providing for how leave is granted, but when leave is granted, leave can be granted on the basis of a period of time. This is something that I think is important to have in mind when we consider the orderly business of this chamber. It is my thought that, when leave is requested, rather than simply granting leave and leaving the time unlimited, stating a specific period of time is more appropriate. The rules provide for 15 minutes. I think it is logical, when granting leave, to indicate a specific time for which leave to proceed is granted.

Also, it depends upon which order we are dealing with. If we are dealing with Senators' Statements, which are to be of no more than three minutes, a short time extension is appropriate. If we are dealing with a speech, doubling the time provided for under the rules is appropriate.

I submit that it is entirely appropriate to grant leave for a specific period of time.

**Hon. David Tkachuk:** Honourable senators, I do not really care how long the good senator speaks. My point is that the deputy leader told us that he is going to impose time allocation next week, yet he is prepared to extend the 15 minutes provided for speeches. We could extend it to an hour by unanimous agreement. A limitation on debate is being imposed on the opposition while an extension of debate is being given to government members.

Will we all get half an hour to speak? If we are granted an extension, will it be 45 minutes or five minutes? This is highly irregular. I would not oppose this if we were not operating under the threat of closure. Every minute of extra time given to a government member takes time away from the opposition. If we were all given an hour, that would be good.

**Senator Hays:** Honourable senators, the rules provide for time allocation, which I said would probably be imposed next week. It may well be that the motion for time allocation will be refused. It will depend on the will of this chamber, which I cannot prejudge. I assume that our side will carry the day, but it may not.

The rules provide for unlimited speaking time for the leaders of the government and the opposition. They provide for 45 minutes for the sponsors of bills. I believe that also applies to speeches on matters that come to the Senate floor through a committee. However, the rules provide for only 15 minutes for other speakers. I think that is too short a time. This is a creature of the revision of the rules carried out under the leadership of Senator Robertson, when she chaired the Privileges and Rules Committee. I think it is unfair to say that we are taking time away from members of the opposition. You have seen me stand in my place and agree to the extension of time for members opposite, and I intend to continue to do so.

The question before us is whether, when we grant leave for senators to continue speaking, we give them unlimited time or we give them a period of time that we think is reasonable. I believe that we in this chamber have the right to grant leave in whatever way we wish. I have proposed that we grant leave for 15 minutes, doubling the time that Senator Sibbeston would have under the rules, and I would be supportive of doing that for members on the other side as well.

I do not think that unlimited time should be granted. We must keep some control over the time allotment for speeches in the interest of orderly process in this chamber.

**Hon. Herbert O. Sparrow:** We have used up a great deal of time on this discussion. We need only ask the honourable senator how many minutes he requires. I think he would request only three or four additional minutes, because he said that he had only two pages left in his speech.

I do not believe that we have abused the privilege of asking for extensions of speaking times. If there is no abuse, why are we so concerned about this? I believe that 15 minutes is too short and that the rule should be changed. Why are we making such a big issue of this? Let Senator Sibbeston speak. It is an important subject. Let us get at it.

**Hon. John Lynch-Staunton (Leader of the Opposition):** Honourable senators, I should like to endorse the remarks of Senator Sparrow, particularly since Senator Sibbeston is bringing to this debate an insight that is not shared by other colleagues. He was there at the time and played a particular role. I am most interested in his assessment of our concern about the constitutionality of section 35. I have been interested in the quotations he has read from certain reports. I, along with others, am gaining much from his contribution. I believe that it would be wrong to cut him off simply because the rules specify a certain time limit — or at the whim of the deputy leader. Those remarks apply to all senators, but in this case the senator has a special contribution to make.

Let us give him leave for as long as he needs and let us have leave for as long as we need to get better insight through questions and comments.

**Senator Kinsella:** Honourable senators, I agree with what the Leader of the Opposition has just said, obviously, but I wish to put on the record that the rule provides for 15 minutes. Leave is requested to ignore the rule. We cannot decide to give Senator A an extra 5 minutes and Senator B an extra 10 minutes. Leave is requested to ignore the rule, which provides for 15 minutes. The logic is the negative of the rule, which is not 15 minutes. You cannot turn that into a positive to say that it is 25 minutes or 35 minutes. It is the simple logic of A versus non-A.

**Hon. Eymard G. Corbin:** Honourable senators, there are days when I do not understand spokespeople for the official opposition. Why did they bring forward the 15-minute rule in the first place? It was to prevent abuse. It was to keep control of the house in tense situations. I can feel tension building up. That rule was imposed on the Senate by the people who now sit on the other side. We should take the consequences of our actions. I find it entirely reasonable that, if we are going to extend the allotted 15 minutes, it ought to be contained and not left open-ended. Otherwise we will find ourselves in the situation that those now on that side of the house wanted to avoid when the rule was imposed. Let us be logical.

• (1600)

**Hon. Anne C. Cools:** Honourable senators, 15 minutes for an important speech is simply insufficient. When the honourable senators on the other side were on this side, they brought in this rule. I have some confidence in and respect for some individuals on the other side and I sincerely suggest that the chamber ought to act as soon as possible to change this silly 15-minute time limitation so that the opinions and points of view of senators can be stated fully for the consideration of all.



I especially look forward to hearing the rest of what Senator Sibbeston has to say, because he is a very important man.

**Senator Hays:** If I can close this, I, too, am looking forward to the comments of Senator Sibbeston, and I regret that his speech has been interrupted by this exchange.

Honourable senators, senators, I am not being whimsical, and I think my record as deputy leader in this place substantiates that. I do not believe I have ever, not even once, done other than agree to extend time when time has been requested on the other side. Increasingly, I have been making it a practice to say that the time should be for a specific and reasonable period of time. Doubling the time provided of what is in the rules falls into that category.

I fail to follow Senator Kinsella's logic. If the speed limit is not 50 miles an hour, then it is 1,000 miles an hour. I do not follow that line of reasoning.

I agree with Senator Cools that we should change the rules. The sooner we do it, the better. In fact, the Speaker has a rules advisory committee to which that very suggestion has been made. When the agenda of the Rules Committee is clear, hopefully this matter will be addressed expeditiously.

**Hon. Marcel Prud'homme:** Honourable senators, I am absolutely astounded and happy and cheerful that Senator Hays, for whom I have great respect, is considering the proposal of Senator Cools to look into the possibility of changing the rules. The deputy leader is opening up an interesting debate about revising the rules. Perhaps he thought that I had lost my energy, which is possible. However, when he decides to revise the rules, would he look into another very important matter, the role of independent senators? Some of us have not given up. We have just decided to keep our powder dry, if that is the expression, until some day when we decide that enough is enough.

Senator Wilson once said to me, "Do not speak on behalf of the independents", so I would not dare to do so. However, I do not mind them speaking on my behalf if it is for a good cause.

In due course, perhaps in May, we should start looking at what an independent senator can do to help save our country and produce something that the House cannot produce. I have a multiplicity of suggestions. However, since the debate at this point is not on the independents, I will stop voicing my views. However, the deputy leader opened the door. When I see an open door, I do not need a written speech. Do not open too many doors. It will eventually be interesting. I suggest that he not answer me, because it will become a debate.

**Hon. Francis William Mahovlich:** Honourable senators, I have not made too many recommendations in the one-and-one-half years that I have been here, but I should like to say, if I can quote my wife, "Less is more."

**The Hon. the Speaker pro tempore:** Honourable Senator Sibbeston, are you asking for leave to continue your speech?

**Senator Sibbeston:** Yes.

**The Hon. the Speaker pro tempore:** Is leave granted, honourable senators?

**Hon. Senators:** Yes.

**Senator Sibbeston:** I thank —

**Senator Lynch-Staunton:** Just a moment now. Did Senator Hays get up and grant leave under condition or without condition?

**Senator Hays:** I am sorry that this issue has arisen during Senator Sibbeston's speech in this important debate. However, I would like to make it a practice on both sides that when we grant leave, and I believe it should be granted, we extend the time for 15 minutes. If we want a ruling as to the appropriateness of that, I think we should seek one. However, I do not wish to see it interfere with the rights of senators to debate on this important matter, although that is up to senators opposite.

**Senator Kinsella:** Senators opposite agreed that leave be granted to Senator Sibbeston to continue.

On the point of leave being granted with condition, that would be out of order.

**Senator Hays:** Honourable senators, I ask, then, for a ruling from the Chair on the orderliness of granting such an extension of leave.

**Senator Lynch-Staunton:** On the point of order, we cannot make up the rules as we go along. Let us give Senator Sibbeston a chance to finish what he has to say. That is the least this chamber can do. He did not know when he came into this chamber, as far as I know, that he would be limited, should he ask for leave. Perhaps he only needs five more minutes. We have wasted half an hour on this, during which we could have heard him and the beginning of another speaker's remarks.

**Senator Hays:** Senator Lynch-Staunton said "we". The position I am taking is an eminently reasonable one, an important one for the carrying out of orderly business in the chamber. However, I see an impossible position here. I will characterize my granting of leave in this way: It is done without prejudice in any way to my ability, upon the completion of Senator Sibbeston's speech, to rise in this place on a point of order and ask for a Speaker's ruling on this subject.

**The Hon. the Speaker pro tempore:** Honourable senators, on that point of order, I am told that there must be unanimous consent in order to grant leave. I do not see unanimous consent to grant leave. I will ask again: Is there unanimous consent to grant leave?

**Hon. Senators:** Yes.

**Senator Hays:** I will not repeat myself, but I leave the record as it is, to be read when the matter is completed.



**Senator Sibbeston:** Thank you, honourable senators. I am sorry that I caused such a delay.

In the Northwest Territories, we have gone through a process where responsible government was achieved by the people. We fought for it and strived towards it, and eventually the Northwest Territories became a fully responsible government.

I wish to turn now to the Nisga'a. The Nisga'a, through their Nisga'a government provisions, will have self-government. They will have responsible government over facets of their lives that will obviously be important to them. They will have the power to define their citizenship and have control over education, health and social services, the police and the judicial system. These are all matters of local concern. I applaud them and trust that they will use their powers wisely to create economic opportunities and a dynamic society for their people. Speaking from my experience in the Northwest Territories, it seems that when opportunity is given to people, they rise to the occasion and act responsibly. I have no doubt that this will happen with the Nisga'a people.

The way that land claims and self-government can be a positive force in the lives of aboriginal peoples in the North is illustrated by the example of the natural gas pipeline in the North. I spoke of this topic early in February when I spoke for the first time in the Senate. I told honourable senators that there is a new attitude, a new strength, and a new feeling of optimism among the aboriginal peoples in the North since land claims and responsible government has come to the North. Twenty years ago, many of the native people in the North were against developments such as gas pipelines. That was because the people of the North felt they did not have control of the lands or the resources to handle such a massive project. Now, 20 years later, they are much better prepared to handle such development. It is positive to see people of the North now supportive of a major project such as this major pipeline from the Arctic. This is something that is occurring in part because of land claims and self-government in the North.

• (1610)

I say this to illustrate that, when land claims are made and self-government agreements are reached, the people really come alive and their ideas come to fruition. I cannot help but think of the people in the Eastern Arctic who have responsible self-government. They have problems because it is a difficult area of the country to govern. They do not have trees or resources. Yet, they have a sense of optimism and spirit. Their culture is coming alive, and their language is strong. The people feel good about what has happened there.

I do not agree with some of the witnesses who appeared before the committee, who said that the bill is unconstitutional because it would create a third level of government. I believe in the notion of the inherent right to self-government. I believe that

right is contained in section 35 of the Constitution. The Nisga'a bill gives expression and detail to precisely what those rights are.

I believe the aboriginal peoples of Canada can best achieve their goals and create a strong independent society by having full and responsible self-government. As for delegated powers, what we have now in the Indian Act is not working. The status quo is not working. It is simply not good enough. Full responsible government is what is called for.

Honourable senators, when all is said and done, after we have debated this measure for the time that we will debate it and when all the constitutional discussions and technical arguments have been made and are over, the important consideration that we must make is whether this bill will improve not only the lives of many of the Nisga'a people, but the lives of the aboriginal people of our country. I have heard many people say that Canadians have a bad history in terms of their dealings with aboriginal people. This Nisga'a bill is a turn for the positive. This bill is something that has been negotiated by the Nisga'a with the provincial and federal governments. Therefore, it will surely work, because it is the result of many years of discussion and negotiation.

From my knowledge and from my experience, I believe the Nisga'a will be better off. I only need to look at what has happened with aboriginal people in the North, in the Eastern Arctic, to see that. I have some knowledge of the Navajo in the United States. They have their own self-government and have control over many aspects of their society. I looked at their justice system when I was working in that area. I see that, through the years, they have brought back their own laws and their own system of justice. Their society is growing and beginning to flourish.

Honourable senators, I was present in the House of Commons when the vote on Bill C-9 was taken. I was proud to see our government and representatives of most of the parties support the bill. That was a proud moment for Canada. It will be a proud moment for Canada when members of the Senate also stand in support of this bill. I stand proudly today in support of it. I trust that all honourable senators will support it.

**Hon. Sheila Finestone:** Honourable senators, I listened to Senator Sibbeston and was proud to hear him speak with such a sense of pride and purpose. He has been closely involved in this matter. I recall a very pleasant visit to the Northwest Territories and being his guest at one point on my trip. It gives me great pleasure to hear what is going on.

I was involved with Bill C-31, which dealt with aboriginal women and their rights. We all share the lands of our aboriginal people. Within our Charter of Rights and Freedoms is the concept of equality and fairness for the men and women of this country. Were the rights of women considered on an equal footing when this bill was considered? Do they fall under our Charter, given the documents that have been signed?

**Senator Sibbeston:** I appreciate the question posed by Senator Finestone. The state of women in the Northwest Territories has improved over the years as our society has changed and aboriginal people have become more involved. In the Northwest Territories, under our land claims agreements and in our role of responsible self-government, women have taken their equal place in society.

With respect to this Nisga'a agreement, I am aware that the agreement says that women and men will be treated equally. Section 25 of the Charter will apply. Apart from that, it is in the hands of the Nisga'a in terms of how women fare. I trust that women will have a good life and equality under the agreement.

**Senator Carney:** Honourable senators, I should also like to congratulate Senator Sibbeston on his speech.

I wish to refer again to a question raised yesterday by Wendy Lockhart Lundberg, who is a member of the Squamish band. I referred to her yesterday in my speech and I have spoken to her since. She wants to know where this matter is referred to in Bill C-9. She wants to know how property rights will apply to native women under Nisga'a law as regards inheritance and matrimonial disputes. There is no mention of that in the treaty. Native women have been unable to establish those rights on many of the band lands to date.

**Senator Sibbeston:** Honourable senators, I certainly do not wish to mislead anyone, but my understanding of the Nisga'a agreement is that with respect to matrimonial property and related matters, B.C. matrimonial property law will apply. I know that that is one aspect of society to which the provincial law will apply.

I appreciate that in any society there are always those who fall through the cracks or who are dissatisfied. I suppose in the Nisga'a situation there are some people, including women, who are dissatisfied and are expressing their views. The hope is that the Nisga'a government and its society will deal fairly with all people.

It is a fact of life that we cannot seem to have 100 per cent satisfaction. Even in our society there are people who fall through the cracks. We have people who live on the streets and who do not seem to fit into society. Native society is no different.

• (1620)

**Senator Carney:** I am sure that my friend and esteemed colleague Senator Sibbeston is not suggesting that native or aboriginal women are a sector of society that is falling through the cracks. It would be distressing if we were to enshrine that concept in this bill.

First, where in the proposed legislation does it refer to the B.C. Family Relations Act that will determine the division of matrimonial property under Nisga'a law?

Second, Wendy Lockhart Lundberg wishes to know that since native women do not have the right to inherit property now and they cannot get their inheritance, what good is that if B.C. legislation subsequently applies? If they do not have it and cannot get it, how can it be divided?

**Senator Sibbeston:** Honourable senators, I am not suggesting that women as a group will fall into the cracks in terms of the Nisga'a government. I was saying that there are always individuals who have a hard time in any society.

I do not have the agreement before me, but my understanding is that the Nisga'a government will deal with the issue of matrimonial property and matters of that sort. I do not doubt that they will have the power and be able to deal with such matters. However, I do believe there is a provision in the agreement where provincial legislation dealing with matrimonial property will apply.

**Senator Lynch-Staunton:** I thank the senator for his presentation, which I found, as I said earlier, most helpful. However, despite his eloquence, I am still not convinced that section 35 does allow what we are being asked to do. I will not go into the argument that I will present tomorrow or next week on this subject. I want to ask the honourable senator if he agrees with me. He probably will not, but let me share my thoughts with him.

A government that I supported promoted the inherent right of self-government. Thus, the senator knows where I come from on that topic. It was our government that eventually achieved unanimity across the country from all the premiers and governments on the Charlottetown accord, and our government was the first to be distressed that the accord was turned down by a referendum. As Senator Carney pointed out yesterday, 30 of 31 ridings in British Columbia turned down the Charlottetown Agreement by a significant majority.

If the government of the day took the risk of a Charlottetown Agreement with the political perils surrounding it, it was because it felt that only through a constitutional amendment could the inherent right to self-government be confirmed and then acted upon. Were that inherent right in the Constitution today, we would not be having this argument about constitutionality. It would be clear in the Constitution. However, self-government is not included. All parties at the time felt that self-government should be included in the Constitution.

The question is, since self-government is not included in the Constitution, would Senator Sibbeston not agree to clarify the ambiguity of the situation? The arguments on both sides are very strong. I read Mr. Molloy's testimony. I read the Statement of Claim made by the Liberal Party of British Columbia. I read Mr. Estey's presentation. I was influenced by the latter two arguments because I found them more detailed. Still, there is an argument on the other side that is also strong.



Can we not agree that a reference to the Supreme Court to allow a resolution of the matter before the agreement is signed would eliminate an extraordinary amount of uncertainty and frustration, that court hearings would be preferable to this agreement being approved now, knowing the proposed legislation will be challenged? Passing this agreement without clarifying the constitutionality issue means that negotiations with more than 50 nations in British Columbia waiting for a similar agreement will need to be delayed, perhaps indefinitely. No government will be willing to get involved in another agreement of this sort as long as uncertainty prevails.

If that issue could be resolved, whether it takes a year or two, the wait would be worthwhile for all parties concerned. If the government was willing to take a hypothetical case of separation as a reference to the Supreme Court, surely it should be even more willing to take an actual case of a precedent-setting treaty to the court to clarify its constitutionality in order to allow other nations waiting for similar treatment to have the same consideration. I am afraid that by approving this proposed legislation with that uncertainty, we will cause more difficulties not only for this agreement but for those that may follow.

**Senator Sibbeston:** Honourable senators, in a perfect world it would be useful to get clarity from the Supreme Court of Canada. However, I rely on the federal government to satisfy itself that it is acting constitutionally in bringing forth this bill in the House of Commons and eventually having it end up here in the Senate.

Witnesses from both sides appeared before us. I tend to agree that section 35 permits self-government agreements as we have seen occur in our society. While there may be a technical or constitutional question, in my own life and experience I have no doubt about the merits of aboriginal people achieving self-government. I have spent a lot of time in the North dealing with self-government and responsible government, and those dealings have been successful. Therefore, I have no doubts about the government acting properly in this case and giving responsible self-government to the Nisga'a.

I believe that when the air has cleared, when the constitutional matters, court challenges and so forth are over, that Canada is perfectly within its legislative right to legislate in such a fashion. I referred in my speech to a number of court decisions that not only make reference to the constitutionality of self-government but also provide some relief and satisfaction that the courts will ultimately agree that self-government is contained in section 35.

**Hon. A. Raynell Andreychuk:** Honourable senators, Senator Sibbeston has been very eloquent on the need for inherent rights to be recognized. As Senator Lynch-Staunton said, a negotiated

settlement and a need to settle these issues and acknowledge inherent rights is not in dispute here.

I was a bit troubled by the senator's last remark. The aboriginal people that I know have always relied on the rule of law. That has been their mainstay — to prove that they have these rights.

Does the honourable senator believe that what we are talking about is not a technicality but rather a fundamental issue? What we want to know is: Have we adhered to the rule of law, the Constitution, to ensure this inherent right? If inherent self-government is within constitutional bounds, it will be the aboriginal peoples' right forever. If it is not within constitutional bounds, we are back to the bargaining table. That is my worry. I want clarity and I want respect for the rule of law that the Constitution gives us.

Would the honourable senator agree that we will be doing a disservice to the aboriginal peoples of this country if the constitutional test fails?

• (1630)

To preface my question, I believe the Nisga'a did what was absolutely necessary within their own rule of law, and no one has challenged it. They followed the rules within their own nation to come up with this agreement. What we are saying is: Have we, on our side, followed the rule of law — that is, the Constitution — to ensure that the two meet, nation to nation, and respect the laws of the land?

**Senator Sibbeston:** I appreciate the honourable senator's question. If the Supreme Court ultimately finds that section 35 does not contain a right to self-government, then the government of the day will need to deal with the issue. Hopefully, they will do whatever is required to amend the Constitution and include, in section 35, the detail that it also provides for self-government. That is a technicality with which the federal government would deal.

However, if the court challenge in B.C. is successful, surely the whole bill will not be struck down but only certain aspects of it. Life would still go on. The Nisga'a would carry on and implement the agreement as best as possible. There may be certain aspects of it that the court finds to be unconstitutional. The federal will need to deal with that.

I truly believe that you cannot take away a peoples' right either to self-government or to responsible government. It is not something that I see either the courts or the government taking away from the people. I have trust in the House of Commons and faith in the Senate and in our parliamentary system that what we are doing is right. I look forward to going to the Nisga'a country 5, 10 or 20 years from now and seeing what we have done and how their society has become vibrant and improved over what it is today.



**Senator Andreychuk:** Honourable senators, I would certainly like to share that optimism with Senator Sibbeston, but I should like to go back to another point. The Charter of Rights and Freedoms applies here. There are a whole host of protections contained in the Charter of Rights and Freedoms, but it does say in this agreement with the Nisga'a, "bearing in mind the free and democratic nation." I do not have my copy of the agreement in front of me either, but there are qualifying words contained in the Charter which place me in a conundrum. I wish to understand whether women's rights are being protected or the customs and traditions and the governance systems of the Nisga'a will supersede women's rights. Aboriginal women have come to me and said, "If you go back and recognize the laws of our nation, they were frozen when you interrupted our governance. Will you make us fight for another 100 years to gain back our rights?" There is a real fear with the Charter of Rights and Freedoms because it has this qualifier for First Nations government. Aboriginal women are afraid that the sections dealing with women's rights will be subject to the laws of the Nisga'a, which may or may not protect Nisga'a rights.

At committee, Dr. Gosnell said that it will depend on the will of the majority in the Nisga'a nation. That answer gave me some trouble in that it was not an answer that said, definitively, "Yes, women's rights will be protected."

**Senator Sibbeston:** I cannot do any better than the information that has been provided and what the honourable senator read in the agreement, which states that the Charter applies and, more specifically, that the rights of equality between men and women apply.

Unfortunately, I do not know the Nisga'a society. I have never been amongst them to find out their customs and practices with respect to women. In our part of the North, women's rights are equal to those of the men in our society. Among the Dene, respect for women is great and women have a significant role to play in our society. They are very much respected as the giver of life to society. I suspect that some of those thoughts and beliefs would be the same for the Nisga'a.

I am at a loss as to how all these rights and freedoms, which are clearly stated in the agreement, will play out in real life. Undoubtedly, the Nisga'a will be placed under a microscope. They will be carefully scrutinized and I am sure that their government will have a great deal of concern to ensure that all segments of their society — and women are a significant part of it — are treated fairly.

**Hon. Jeremiah S. Grafstein:** Honourable senators, I oppose the Conservative amendment to hoist this bill for six months as it fails to answer my concerns, and worse, intensifies uncertainty in British Columbia and impedes legal redress.

I will not reiterate my views given at second reading, which I do not believe have as yet been fairly satisfied. My concerns with respect to the constitutionality of this bill rests on the power architecture of the governance provisions and the grants of power

to the Nisga'a. These concerns cause me to differ with the advocates of this measure.

The constitutional opinions given in evidence are deeply divided on the reach of section 35 of the Charter and the bill's impact on the exercise of federal powers under section 91, as well as the residual or extended powers of "peace, order and good government" remaining unfettered in the hands of the federal government. To what extent, if any, are both Parliament's express powers and residual or extraordinary powers limited or curtailed by the grant of powers to the Nisga'a, and to what extent may they be altered without express constitutional amendment? Also, what of the federal power of disallowance in the Constitution as a historic prophylactic against unjust or extreme provincial laws?

On a different yet related matter, I would ask Senator Austin, who is not here today but has undertaken to respond to questions raised, to specifically respond to the legislative concerns addressed by Professor Stephen A. Scott of McGill Law School. On page 3 of his brief given in testimony, entitled, "The Rule of Law", he talks about the inadequate provision or preservation of legislative and administrative archives of the Nisga'a government and the apparent lack of obligatory provisions for the publication of legislative and executive acts.

Professor Scott went on, properly in my view, to criticize the federal government for failing to annex to Bill C-9, the final agreement and related instruments to the bill, as they form the pith and substance of this legislation. I share Professor Scott's concern as to the legislative appropriateness of the bill as tabled and published before us since, apparently, it will not be published in one combined document in the Statutes of Canada.

I raise this issue because it has not been previously raised, and I would hope that the advocates for the government measure will respond either in this debate or on third reading.

As for the constitutional divide, the key issue centres around the division and exercise of powers under the Constitution. Can the federal government abdicate express powers and retreat from its residual power by granting concurrent power to the Nisga'a government architecture, where 14 powers are placed in the hands of the Nisga'a government to be paramount? Whether or not the federal government can, as some argue, grant or abrogate its powers without an expressed constitutional amendment lies at the heart of the arguments of Professor Scott of McGill, former Mr. Justice Willard Estey, and two former attorneys general of B.C. given when they or their representatives appeared before the committee.

• (1640)

As for myself, I fear most reluctantly that I share those concerns. I have asked myself whether the federal government has the constitutional power to give up its residual or modernizing or extended powers of override under "peace, order and good government."

These include the question of the future reach of federal power to fill future gaps in legislative powers, which I do not believe has been satisfactorily answered by our colleague Senator Austin. Nor has the question of section 96 of the Constitution, the provision of the independence of federally appointed judiciary and the apparent conflict in the appointment of judges under Chapter 12, paragraph 37, of this treaty.

Let me reiterate more expansively one question that intrigues me that I am not sure has been fully answered by Senator Austin. Are both Parliament and the federal cabinet in its capacity supreme and unobstructed in the case of a national emergency — be it hyperinflation, pollution, economic distress, or even war and possibly conscription under Bill C-9? Would the federal government be able to exercise overriding powers with respect to those powers now said to be paramount in the hands of the Nisga'a without infringing this treaty proposed to be constitutionally protected under section 35 of the Charter? Was the original intent of section 35 to give constitutional protection to the rights of self-government beyond the reach of federal powers as well as land claims?

I think not. I do not believe that the 1982 Constitution, the original intent thereof, sanctioned constitutionally protected non-delegated self-government to aboriginals. I regretfully say, Senator Sibbeston, that I do not believe that was the case.

Let me point to another substantive issue that gives me deep concern. There are, on the Nisga'a lands, between 90 and 100 or more people who are non-Nisga'a residents, residents under the Nisga'a Constitution. They have the right, under the Nisga'a Constitution, to be heard on matters affecting them. Under the Nisga'a Constitution, there are no transparent rules to allow those non-Nisga'a to become voters. They are a minority. They are subject to manifold and paramount powers of the Nisga'a government in everyday life, yet are not allowed the right to vote. As I pointed out to the minister, since they are a small and changing minority of non-landowning residents, they would in no way threaten the Nisga'a in terms of their culture, lifestyle or day-to-day life.

On page 36 of the evidence before the committee on March 23, 2000, the minister responded to my concerns with these concluding comments:

My political preference is to allow people to make those decisions and to include a non-native person as a citizen if they are involved in the culture and not just a passerby. I know there have been suggestions that if you have a teacher or a nurse that happens to come for a few years they should

have the same rights as a Nisga'a person. I would say no, that is not the case. However, if you are a lifelong person, living there for your whole adult life, or your childhood, then I believe there is room for them to be part of the democratic process.

I responded by saying we have a five-year rule in Canada. By that I meant that, when it comes to immigrants to Canada, we have a five-year transparent rule.

Turn then to page 63 of the evidence of the committee on March 23, to the eloquent Dr. Gosnell, speaking on behalf of the Nisga'a. I say "eloquent" because I have the deepest respect for Dr. Gosnell and his extraordinary powers, and how far and how long and how arduous his path has been to this place. It gives me deep regret to differ with him. Let me quote what he says in full:

I shall now turn to the subject of minority rights. Much has been said about the minority rights of those individuals who will work within our communities following the effective date. At the last committee meeting that we attended, I listened to Senator Grafstein. He said that never in the foreseeable future could this minority ever overwhelm the majority. This is a question of minority rights.

Mr. Chairman, my views differ from Senator Grafstein's. History has taught the aboriginal people across North and South America well. Five hundred years or so ago, a group of explorers, the so-called discoverers of our lands, stumbled upon North and South America and they ventured onto the shores of this great country of ours.

I believe that the views of the aboriginal people then were the same views expressed by the honourable senator, that we were never to be overwhelmed by these people coming off these ships. However, here we are in the year 2000, 500 years after the discovery of North and South America, and we are completely overwhelmed. I need not remind you of the statistics in Canada that we form 2 per cent of the population. We are completely overwhelmed in our own country. That is what we fear, honourable senators, with respect to the total recognition of minority rights within our lands.

Aboriginal people of both North and South paid a devastating price for this march, which we know today is a march towards progress. We have paid a terrible price for that.

Why have we not gone the extra distance the honourable senator indicated? Why did we not go 100 per cent and grant everyone within our lands the right to vote and participate in our government?



I just indicated to you one of my views. However, by way of comparison, would any of you seated across this table in this room allow strangers or individuals who stay with you temporarily to decide how your family's internal assets would be handled? Would you do that? This is the problem that faces us. There are people who come into our community maybe for a year, two years or three years and then are gone. Would you allow that to happen? I ask you the same thing. If you were in our shoes, would you do that? Would you allow someone to handle your family's personal assets? I do not think so.

Dr. Gosnell continued on women's and minority rights:

Honourable senators, we left the door open for the government of the future to have been married to non-Nisga'a; how well they have fit into our society, how well they abided by the laws of our people and participated in our culture. They will have the ability to grant the right to those people at some time in the future. I cannot make that determination. It is not for me to do that. I will leave that topic at that point. I am sure there may be further questions.

Honourable senators, I thought it was most important to quote Dr. Gosnell fully in context. Let me humbly suggest that I disagree with both the minister and Dr. Gosnell on this crucial point. The right to vote and choose is the most important of all political rights. That is the very heart and soul of all minority rights. Dr. Gosnell, I respectfully suggest, is not correct when he says, "Would you allow someone to handle your family's personal assets? I do not think so." With all due respect to Dr. Gosnell, what we are talking about here is not anyone's personal assets. These are not family assets. These are public assets that are held in trust as fiduciaries. What I am talking about here is the right of a citizen to fully participate and vote on matters affecting his life and the area in which he chooses to reside. In Canada, we adopted a transparent five-year rule for citizenship that gives the right to vote. The right to vote goes to the heart of any right to participate in a civic society.

Given the circumstances, and, most regretfully, given the nature of my concerns, I have no choice but to oppose the Conservative amendments and to abstain on Bill C-9.

**Hon. Lowell Murray:** The concerns that the honourable senator has expressed are very serious and in both cases bear upon the constitutionality of the bill. Yet he began his speech by indicating that he could not support the amendment proposed by Senator St. Germain. I appreciate that. I am sure he does not want to vote against the bill; he does not want to defeat the bill any more than I do or anyone on this side does.

That being the case, the question I will ask him is this: What is his advice to the government? Abstaining, while it is permitted

under our rules, does not solve very much. Is he familiar with the cases that have already been launched in the lower courts? Do they bear directly on the concerns he has expressed? Does he believe that this situation is extraordinary enough for the Governor in Council to exercise its right of reference to the Supreme Court of Canada now?

• (1650)

**Senator Grafstein:** The honourable senator raises a number of issues. Let me give my personal views because each one of them I have turned over in my mind since I started reading about this issue. Let me start with the conservative amendment.

I do not believe a hoist of six months will do anything. I do not believe that there will be time to correct this. I believe, from what we have heard, that the current constitutional challenges will be impeded while this matter is abeyance. It is not fair to the Nisga'a nor to the residents of British Columbia, and it is not fair for certainty.

In my view, and I know this seems convoluted, we should let the Senate have its will on this matter, rather than hoist this bill for six months. Then if there are those who will choose to attack this bill from a constitutional perspective, that will be the case. There is a failsafe within the bill. It will be severable. The treaty will not go down. It will be changed, possibly, or be renegotiated, in part, if in fact the courts come to that decision.

I am unhappy with the bill because of something that I did not mention in my speech. Constitutional approaches to this bill are not permitted by the attorneys general. They cannot participate in a constitutional offence, but they can defend it. I leave that aside. It is regrettable, but I leave it aside.

I have made my view clear in this respect. We understand from the courts of British Columbia that they will not deal with this matter until it is the law. The sooner the law exists, the better.

Former justice Willard Estey gives his approach on the advisory and it is echoed by the honourable senator opposite. I do not believe in advisories. They are fundamentally in conflict with parliamentary supremacy. We take our duties here; we legislate here. It is not fair for us to criticize the courts, as we have done, and then turn an issue over to the courts. That is why I do not believe in advisories. We take our responsibilities here and let the courts, in their independence, take their responsibilities.

I wish to add to the points made by Senator Sibbeston and Senator Gill's point. We face a conundrum. Recently, senators had on their desks an analysis of all the actions before all the courts in Canada. I am quoting from memory and I may not be correct, but somewhere between 20 and 30 of the full court calendars are clogged with aboriginal claims precisely because of what Senator Sibbeston has suggested. We have not been able to come to a constitutionally effective method of government.



Honourable senators, this is where he and I fairly part company. I believe that the existing models, which are illustrated to work well in the Northwest Territories and the Yukon, would continue to work well without an abrogation of federal power. Hence, we part company.

I have also examined very carefully the Navaho experience in the United States. I believe that under the Navaho experience there are fulsome powers, but the American Congress never decided to abrogate its overriding responsibilities. There is a difference.

If I am wrong, I hope that others will debate these issues later on in third reading.

**The Hon. the Speaker *pro tempore*:** Honourable senators, time for questions and comments has expired. Is there unanimous consent to continue?

**Senator Hays:** Honourable senators, before we go to the question of unanimous consent, could I ask Senator Grafstein — and Senator Murray, for that matter — how long he thinks this exchange will take?

**The Hon. the Speaker *pro tempore*:** Many senators have indicated a desire to speak.

**Hon. Lowell Murray:** I will try to be brief.

**The Hon. the Speaker *pro tempore*:** Is there unanimous consent for leave to continue?

**Hon. Senators:** Agreed.

**Senator Murray:** I agree with the honourable senator, as a general rule, with regard to direct references to the Supreme Court of Canada. I have no more desire than he has to make the Supreme Court of Canada a third house of Parliament, but on reflection I think he will agree that this is a power to which we resort only in the most extraordinary circumstances. I think of Bill C-60 in 1978, of the patriation initiative, and the secession reference that we are now discussing in connection with Bill C-20. Those were direct references. The question is whether this is extraordinary enough to warrant the reference.

The honourable senator says, "Let the bill become law but I will abstain." With the greatest respect, that is not very helpful. How can he tell the rest of us to vote it into law but he will abstain? Does he not recommend that all of us abstain and follow his example and, if not, why not, if he thinks that is the right position to take?

**Senator Grafstein:** Honourable senators, I am not very happy with my position. I think it is colourable, to say the least. Let me be candid. I started out in my exploration wanting to support this bill. That was my original premise. Quite frankly, I am not being fair to myself by merely abstaining. I accept that. My own position is somewhat colourable.

I want to say this to the honourable senator. I was the only senator in this chamber who abstained on second reading because I had serious doubts about the principles of this bill. At least in that sense my position has been consistent, unlike that of other senators.

**Hon. Serge Joyal:** Honourable senators, the interpretation of section 35 is, of course, at the heart of the debate. It has been said on many occasions on both sides that the interpretation is not as clear as one would expect from a section of the Constitution that is so fundamental to this debate.

With all due respect for the opinion of the honourable senator, how does he arrive at the conclusion that section 35, as now drafted, is contrary to the interpretation in Bill C-9? On which study of section 35 or which aspect of section 35 does he base his interpretation of the bill that is contrary to section 35? He made that statement without developing it.

**Senator Grafstein:** Again, the honourable senator has the better of me in this but let me answer. I would hope that those who were directly involved in the 1982 debates would give the Senate the benefit of their views on the most serious question of original intent.

Under the Constitution, unlike other senators, there is a doctrine of the living tree. There is also the doctrine of *stare decisis*, but the key doctrine in constitutional interpretation is the original intent. What was the intent of the signatories to the Constitution at the time?

I looked at those debates. I read some of the material, but not all. Based on my examination of the debates and the discussions of the various participants, I came to the conclusion that there was a question in the minds of the drafters. They could not, at the time, figure out the extent of inherent aboriginal rights. Therefore, they decided to limit, at the time, the definition of aboriginal rights, saying "aboriginal rights, including those related to land claims."

• (1700)

I was a second-hand observer of all those debates. I ask myself why, if Senator Sibbeston is correct, self-government was not added at the time. I think I know the answer, and that is that it would never have carried.

Why, under Charlottetown and Meech, which I opposed, were those issues articulated as a constitutional amendment and why were they ultimately dealt with in the way that they were? If I consider original intent and government actions since, on the overwhelming balance of probabilities and the overwhelming evidence I could not come to the conclusion that self-government — undelegated, untrammelled paramountcy — would have been granted to aboriginals. I do not think one would have come to that conclusion.

On the other hand, what are we left with to deal with Senator Sibbeston's concerns about responsible government? I believe that there is responsible government in Nunavut and the Yukon, and I agree with everything he said. However, if you examine those models of governance, they did not curtail federal power.

I agree wholeheartedly with everything Senator Sibbeston said. Yet, to me this particular model goes beyond the original intent of the drafters. Let us hear from others. If they believe that the original intent was as the advocates of this bill suggest, let them quote the speeches. Senator Sibbeston was very fair. He said that this was extension of rights and growing rights, but was it the rights granted at the time and was it the intent?

It is a fundamental issue. I read as much as I could and I regretfully concluded that it was not the original intent.

**Senator Andreychuk:** I wish to ask Senator Grafstein about the amendment that he does not support. I believe that he is absolutely right, that we need to clarify section 35. Contrary to other references that got the courts into policy matters, a full interpretation of section 35 would be put to the court. That would put this argument to rest. There seem to be good opinions on both sides. It is universally agreed that the court has yet to rule, and I believe that the court should definitively rule on this.

By not putting a reference before the court, people will have to fight one position or the other after the fact. We have been told by the B.C. Liberal Party and by the Gitksan and Gitanyow that there will be court challenges. That will create winners and losers. I thought no one disagreed that the best result was negotiated settlement. If that is so, do you not believe that a six-month hoist would be desirable to allow either clarification or a reference?

**Senator Grafstein:** I believe that the fastest way to be fair to all parties is to allow those who seek redress to obtain redress. I do not want the perfect to drive out the good. As Senator Sibbeston, Dr. Gosnell and Senator Gill have said, this is not a perfect document. It is a conundrum. I should like to give the senator more solace and consolation, but I can go no further. I have explained myself as best I can.

**Senator Sparrow:** Senator Grafstein tried to explain to Senator Murray his reason for abstaining. He said that the Senate has a responsibility. It is not clear to me what he deems that responsibility to be. If the bill is passed, of course there will be court challenges to it.

Does Senator Grafstein think that if the majority in this chamber believes that the bill is unconstitutional, it should be defeated here? In response to Senator Murray's question, the reply was that we should all abstain. We know that that may not work, although we all have the right to abstain under our rules. Does Senator Grafstein believe that the Senate should accept its responsibility to defeat this bill?

**Senator Grafstein:** At second reading, the Senate said that it would approve the bill, and I start from that premise.

Each senator must answer to his own conscience. The best that I can do for my conscience is to clearly express my reservations. I have raised them as concerns. If I were wholly satisfied with my views, I would go all the way. However, there is a deep divide in constitutional opinion. I have opted for one side of the equation. It does not make me feel comfortable taking the rather indefensible position that I have.

You can lacerate me all you want. However, my first duty was to fully explore the issues, which I tried to do in committee. We had very good committee hearings. No one in British Columbia can say that there was not a fair and adequate hearing. I hope that in the course of this debate all senators can express their views so that there will be a full record of this. After that, honourable senators, we are left to God's mercy.

**Senator Sparrow:** Honourable senators, I understand Senator Grafstein to be suggesting that, because the Senate gave the bill second reading and sent it to committee, it was a fait accompli and there would be no opportunity for us to vote against it on third reading. I do not think that is accurate. It has certainly happened before that a bill was agreed to in principle at second reading, was referred to committee, was reported back to the Senate, and was defeated.

Did I misunderstand what the senator said? Did he say that we have an obligation, because the bill was given second reading, to give it third reading?

**Senator Grafstein:** Honourable senators, that does not apply in all instances, but in this instance we have a very comprehensive treaty in front of us. I looked at it before. It took me some weeks to read it and understand it. I came to the conclusion that I had serious reservations about it. I remain in exactly the same place now as I was on second reading.

• (1710)

You are right, honourable senators. I will not give you the answer that you would like, because I cannot give it for myself.

**Senator Kinsella:** Having participated as an advisor to the New Brunswick delegation during that period, I did go and look up some of my notes in that period. I found written words that included, "We are talking about municipal government." When the court examines this question, if the court examines the travaux préparatoires, I am sure that your view will be vindicated.

I have a problem similar to Senator Murray's. Having that concern, and sharing the concern that you have, are there other ways in which the Senate could advise the Crown? The Crown is seeking our consent on this matter.



**Senator Grafstein:** Once again, let us be factual. Let us be functional. The government has said clearly, in no uncertain terms, both in that place and this place, that there will be no advisory. They have said that. That is a fact. The government has said that it will not countenance amendments. They have said that. Although they allowed one amendment, they did say that. Let us be pragmatic. Let us be fair to the Nisga'a and fair to the process. The government has said that.

My view is that rather than dealing with a further delay, if such is the case and such is the will of government supporters for this measure, then it would be better to allow the courts a fair redress as soon as possible. I see no other way of dealing with this in the regrettable circumstances in which I find myself.

**Senator Kinsella:** I cannot recall whether Senator Grafstein was here when I asked Senator Austin his view as to the repeatability of this bill, but I wonder if he has a view on that question.

**Senator Grafstein:** I have not looked at that question independently, but I am not sure I agree with Senator Austin.

**Hon. Gérald-A. Beaudoin:** Honourable senators, the intervention of Senator Grafstein is very important, in my opinion, and I agree to a great extent with him on the constitutional problem. The question of the advisory opinion is another matter.

For the purposes of the record, and before this bill comes to a vote, I wish to say as a preliminary remark that I agree entirely that the rights of the aboriginal people and nations should be recognized by Canada. They were in Canada long before the Europeans arrived, and there is no doubt that they have collective rights under section 35 of the Constitution Act of 1982. In 1867, we did not pay enough attention to their rights, and I am glad that section 35 was enshrined in our Constitution in 1982.

Section 35 concerns not only the existing rights, but also the rights given by treaties and accords to come. Senator Murray, Senator Joyal and others referred to what took place when section 35 was enshrined in the Constitution, and I understand that some other senators will be saying something on section 35.

I have only one doubt about Bill C-9, and it is only on one point — the paramountcy given to aboriginal peoples in 14 areas of concurrent powers. In the debate we are in now on six-month hoist, I wish to add that aspect of Bill C-9. Nothing in the federation is more central or more important than the division of powers, and that is where my doubt resides.

We are dealing with powers. We already know that in our federation we have provincial and the federal powers. Some powers are exclusive; some others are concurrent. Sometimes we give paramountcy to the provinces, and sometimes we give paramountcy to the federal authority. For the first time, I now see a legal text that is talking about concurrent powers with paramountcy that is neither federal nor provincial but is for the aboriginal people.

Experts on the Constitution were heard in committee in March, and some were in favour of the bill. Dean Hogg and Professor Monahan, who appeared before another committee, were of that opinion. I have the greatest respect for both opinions. Some others, like Professor Stephen Scott and the Honourable Bud Estey, have said that the bill is *ultra vires* in that area.

Most of the bill is perfect, but one area is causing a problem. To that extent, it is unconstitutional. I agree that it is severable. If ever the court says it is unconstitutional, the rest of the accord will be declared valid.

Interesting questions were raised on both sides of the committee by senators. It is a very difficult point of law. The chances are that the bill will be challenged in court, if that has not already happened.

The Supreme Court has already rendered many rulings on section 35, and more than one federal-provincial conference has taken place. The Supreme Court has not yet stated that in section 35 there is a third order of government that is implicit. I regret that, but they have not said it. They may say that in the future, but they have not done it yet. The Supreme Court has been generous to the aboriginals, and I agree with that entirely, but it has not gone so far as to say that there is a third order of government.

Of course we can do that by a constitutional amendment. We can amend any section of our Constitution by a constitutional amendment. However, we are not concerned with a constitutional amendment now; we are concerned with the statute and an accord.

The work of the Supreme Court is impressive. Contrary to Senator Grafstein on this, I am in favour of reference cases. I think they are very important. In Bill C-20, we have already had a reference to the Supreme Court. I think that reference cases are useful.

• (1720)

In view of the difficulty of the present question, the chances are that the court will be invited to rule again. Some people have proposed a reference to the Supreme Court. The government believes there is no need to refer the matter to the courts for an opinion. Sometimes the government says yes; sometimes the government says no. In the case of this decision, it said yes; in the case of the Nisga'a, it said no.

Bill C-9 will constitute a precedent of vital importance. Many other accords will take place in the years to come. Therefore, we must be prudent as parliamentarians and adopt the best possible legislation.

Some of us have serious doubts about the division of powers in one part of Bill C-9. However, as I said, in a federation, is there anything more important than the division of powers?



It is true that the Criminal Code and the Charter of Rights and Freedoms both apply in this case. I am glad to see that. That is something on which I agree. This has no effect on the division of powers. If we read section 31 of the Charter, it states, "Nothing in the Charter extends the legislative powers of any body or authority." That does not change the division of powers. This means that the question of the paramountcy in 14 areas of concurrent power is still there.

In view of the decision not to go to the Supreme Court, I think it was appropriate to express our opinion on the question of paramountcy in 14 sectors of the concurrent legislative powers referred to in this accord. That is of a fundamental importance.

[Translation]

**Hon. Aurélien Gill:** Honourable senators, I have already spoken to the Nisga'a final agreement. In recent weeks, I have listened to so many speeches and opinions on the subject that I will long be assured of the virtues of our democracy. However, at the stage we have reached, I think it my duty to intervene once again to point out several crucial elements raised by these debates.

When I heard the opponents of the agreement as it stands say that it sets a dangerous precedent for the country as a whole, because it embodies a diminishing of the sovereign powers of the Crown, and that such was unthinkable, I smiled.

When I heard it argued that this historic agreement could not be implemented because it contained too many uncertainties, grey areas and imperfections, I smiled.

When I saw certain legal experts become busy bodies and legal quibblers, deliberately playing on words and concepts and raising a flurry of abstractions that would obscure any horizon, I smiled again.

You will say I did a lot of smiling instead of weeping and you will be right. A smile is wise and there is no point in getting upset. You should know, too, that the smile is dear to the heart of the Indian. All too often in history, that is all we were left with.

On the loss of sovereign powers, need I remind you that the First Nations are the first experts on the matter? Originally, we abandoned sovereign powers in order to share with the newcomer a world that, until then, was ours alone. Our historic realism, our flexibility and our creativity were royally had, because the Canadian treaties were not respected, as we all know. Nobody can lecture us on the abuse of sovereignty, but we might be able to give a few lectures on our dreams for sharing.

Once and for all, we must affirm that rights and reason cannot dance together to different drums. Our inherent rights predate the Constitution of Canada, which recognizes the authenticity of our rights.

[English]

The famous third order of government has always existed in Canada — it simply has been crushed and ignored until now. Responsible aboriginal government is not a dangerous or unproven novelty. It is restoring, confirming and updating an act of law.

[Translation]

A strong group that claims to be conciliatory — but which is not at all — would have the First Nations' new powers restricted to the political framework of regional municipalities, whose jurisdictions would not in any way affect the Crown's absolute power. These people want a simple delegation of powers, nothing more. They need to be better informed. That stage was reached in 1975 in the Province of Quebec. The James Bay Agreement was the first example in Canada. This year, we are celebrating the 25th anniversary of that agreement.

If there is a lesson to be learned from the James Bay Agreement, it would be about the ups and downs of the autonomy that is sought. The municipal level is grossly inadequate and it puts First Nations in a situation of chronic powerlessness at the political level.

The Cree and particularly the Inuit of Northern Quebec are now turning their energy to the creation of responsible self-government. The municipal level, even at the territorial level, may have been a necessary stage in the recent history of our political claims, but those stages are now behind us. We must take new steps and the Nisga'a agreement is, right now, that next step.

The history of British Columbia is short. Until 1970, the province's positions on First Nations' lands and rights were very harsh and consequently unfair. The Nisga'a, among other nations, were humiliated and rebuffed at some infamous meetings. In the old days, they were denied access to the provincial legislature, their claims were ridiculed and they were publicly called "primitive". The province long resisted the very idea of treaties and it traditionally argued over every acre of land given to the Indians as part of federal reserves under the Indian Act.

So, the step that we could now take is a giant one and is entirely to British Columbia's credit. It corrects a historic flaw and has a great historic impact. But history is not our forte, our society has more rights than it has memory. Some raise the argument of uncertainty while fearing the worse for our grandchildren, who will have to live with these fundamental changes.

I heard that comment. As I said, I smiled. Are we not the grandchildren of those who drafted the Indian Act? Are we not the grandchildren of those who bequeathed us this national disgrace, namely the plight of First Nations in this country?

Who are they to ask for a perfect, pure and watertight agreement, a sure treaty, an act void of any flaws, risks or grey areas? Do you think that the Fathers of Confederation were pure and perfect when they designed Canada, in 1867? Remember the concept of Canada as two nations.

The first confederation had a minor flaw in that it buried the First Nations. Was it a perfect law?

• (1730)

Where do you get the idea that our Canadian political system is without flaws? What is more, the First Nations should not be entitled to make mistakes. Granted, the agreement is imperfect and does not provide an answer to all of the questions and all of the problems of the past, but this is no reason to tear it up. There can be no progress without risk, and the search for immediate perfection is an argument made in bad faith, which cannot do otherwise than to paralyze or block any action aimed at improving our situation. Progress is a gradual process.

Let us take the example of overlap in the borders of the Nisga'a ancestral lands. Should this difficulty be an excuse to jeopardize the agreement? Some would like to see this and are making a big thing of it. The Gitanyow themselves, however, who claim to be affected negatively by this, are not insisting that the Nisga'a treaty be blocked. It is important that this conflict be resolved, but this should be done in some other framework. Disputed borders are commonplace, and are found everywhere in the Canada of the First Nations. There are also disputes between provinces and within provinces. There are some in Quebec between the Innu and the Cree. In the Northwest Territories, there are some between the Dene and the Inuit. As soon as an agreement is negotiated with a nation, the neighbouring nations will start clarifying their borders. This is normal. Why should we be surprised at it? As we people got scattered about and isolated in our own tiny enclaves, certain borders became unclear.

One way or another, why would we, the First Nations, not have our own set of problems? We have found solutions in the past, and we can do the same in future. We are updating our ancestral geography. Let the First Nations clarify these matters. Just give things time.

Above all, let us stop using all sorts of excuses to side-track and delay a historic process of the utmost importance to Canada. Yes, the Nisga'a treaty sets a precedent: it restores collective pride. Yes, there will be other agreements and they will be better, for the benefit of all. We cannot wait to find the ideal formula to give effect to principles that have long been recognized.

Debate is important and democracy requires it. Words count, as we know. We also know that the written word shapes our relations. This is why we have fora, committees, parliaments and commissions. We sign agreements and treaties, laws and social contracts. The Canadian Charter of Rights and Freedoms protects us. We have a contract of incorporation, the Constitution. However, there comes a time when we must look at the concrete

application of our words, when we must judge our actions against our words. We must deliver.

Governments have always cloaked our rights in words and pressure. We should remember. We should tell ourselves over and over that these words must be put into effect. Around 1830, during the dispute between the Cherokee Confederation and the State of Georgia in the United States, Justice Marshall ruled that the Cherokee, like all the other First Nations identified, were a domestic nation with whom an international type treaty, or treaties, must be negotiated.

In this same country, under Presidents Jackson and Monroe, serious consideration was given to creating a confederation of aboriginal states within the American nation. Barely were these fine intentions and principles uttered than the Cherokee, along with the Creek-Seminole, the Choctaw and the Chickasaw were driven out of their ancestral lands in Georgia into inhumane conditions in Oklahoma, to the great disgrace of the nation. These fine words having been uttered around about 1830, the Americans would spend the next 60 years engaging in war, fraud and all manner of wrongdoing in order to erase the existence of the First Nations from the now American territory.

[English]

Canada was certainly less violent in its history. However, its policies toward us have rarely, if ever, reflected its principles. That is why we have traditionally been betrayed. It is time to move from words to action — and generous action, too. If our rights exist, power must be shared, and it is as a founding First Nation that we belong to Canada.

[Translation]

This reality, discovered from rights that have always existed, is indeed the one that makes it possible to be a Nisga'a in a province called British Columbia in a confederation called Canada. In all good faith, it is possible despite all the problems we will have to resolve together. And there will be problems, but their resolution will be interesting. There are others that are outdated. Stop keeping us in insufferable dead ends with your legal quibbling and bad faith. The Nisga'a agreement, while certainly less than perfect, represents a hope, and its importance must be recognized. It is better to work to improve it afterward than to have to negotiate its abortion. We are a law-abiding society. We must rejoice in this. We are a just society. We must celebrate this. However, have we resolved all the problems, met all the challenges of modern, complex and changing society? Of course not. We have law in order to advance, not back up. We have justice in order to continue our quest for justice and not to distance ourselves from it. Recognition of their inherent rights represents a catching-up, in terms of justice, for the First Nations. They are not new rights invented to suit current circumstances. They have nothing to do with political opportunism. We are talking about the updating of ancient rights long trampled on. How can we cite the Constitution and then deny what the Constitution affirms?

On motion of Senator DeWare, for Senator Comeau, debate adjourned.



[English]

**BILL TO GIVE EFFECT TO THE REQUIREMENT FOR CLARITY AS SET OUT IN THE OPINION OF THE SUPREME COURT OF CANADA IN THE QUEBEC SECESSION REFERENCE**

SECOND READING—DEBATE CONTINUED

On the Order:

Resuming debate on the motion of the Honourable Senator Boudreau, P.C., seconded by the Honourable Senator Hays, for the second reading of Bill C-20, to give effect to the requirement for clarity as set out in the opinion of the Supreme Court of Canada in the Quebec Secession Reference.

**Hon. Donald H. Oliver:** Honourable senators, I am pleased to join the debate on this important matter.

Few issues are more important than the preservation of Canadian unity and the maintenance of a strong and vibrant federation that includes Quebec. In introducing Bill C-20 and passing it in the House of Commons on March 15, 2000, the federal government claims to be promoting the cause of Canadian unity by implementing the advice of the Supreme Court of Canada tendered in the *Reference re Secession of Quebec*. In particular, the government claims to provide clarity on the preconditions to an obligation to negotiate secession — namely, a clear majority vote on a clear question. The government also claims to include Canadians as a whole by assigning to the House of Commons the legislative role of determining what constitutes a clear question and a clear majority.

Honourable senators, it may be ominously appropriate that Bill C-20 passed third reading in the House of Commons on March 15, 2000 — the ides of March. Like the soothsayer in *Julius Caesar*, it behooves the Senate to warn the Canadian people — beware the ides of March and Bill C-20 that accompanies it. Like the assassins of Julius Caesar, who claimed to be his friends, Bill C-20 is not what it claims to be. It delivers confusion in the name of clarity and exclusion in the name of inclusion. Furthermore, it is not simply implementing the advice of the Supreme Court of Canada but interpreting it and applying it in a way that runs counter to the spirit of rational decision-making and good faith negotiation that permeate the much-praised *Reference re Secession of Quebec*.

● (1740)

It is also important to remember that Bill C-20 deals with the right of any province to secede from the federation, not just Quebec. As a senator from Nova Scotia, I remind honourable senators that the first attempt to secede from Canada came from my province when Premier Joseph Howe, having soundly defeated Sir Charles Tupper in the post-Confederation provincial

election, went to London and asked the Colonial Secretary to allow Nova Scotia to leave the federation, which was less than one year old. The request was denied on the basis of the new political and economic links between the federation partners. While Canada has matured beyond going cap in hand to London, we should pause and consider whether the House of Commons-centred structure proposed in Bill C-20 is inclusive enough to be consistent with the free and democratic society that our Constitution claims to be.

As with any reference decision, what the Supreme Court of Canada said in *Reference re Secession of Quebec* is an advisory opinion and, in that sense, not directly mandatory. This is a rather academic distinction, however, because modern governments treat reference decisions in the same way they would any other court judgment. Moreover, the wisdom of the Supreme Court of Canada on this vital matter should be followed. In this regard, it is important to note what the court did and did not say in respect to clarifying the preconditions to a constitutional obligation to negotiate.

Many political commentators and academics have analyzed the wide-ranging and impressive decision of the Supreme Court of Canada on this matter, and I shall focus my brief comments today on the key matters relevant to Bill C-20. Where possible, I will quote extensively from the decision itself. Time and space prevent a proper analysis of what the Supreme Court of Canada had to say on the constitutionality of secession. It did conclude that it was not a matter for unilateral provincial action but, rather, a matter for good-faith negotiation among all the relevant political actors at both the federal and provincial level.

Honourable senators, one of the important contributions of the court is its delineation of the proper roles for courts and political actors in any secession process. The court is to provide the broad legal framework, but the detailed answers about what constitutes a clear question, what is a clear majority, and how any negotiations are to be conducted are properly left to the political rather than the judicial realm. In answering these questions, the political actors are to be guided by the underlying principles of the Constitution: federalism, democracy, constitutionalism and the rule of law, and last, but not least, the protection of minorities. I should like to briefly discuss each of these four.

Mary Dawson, one of the federal lawyers who litigated the *Reference re Secession of Quebec*, praises the court for its judicial restraint on the political aspects of the process in the following passage from her article on this case:

The Court goes on to explain the rationale for its restraint in these matters. It notes that “only the political actors would have the information and expertise to make the appropriate judgment.” The Court recognizes that, if a negotiation of the details of secession were to take place, the reconciliation of various legitimate constitutional interests belongs to the political realm “precisely because that reconciliation can only be achieved through the give and take of the negotiation process.”



The Court has done us a great service in setting out these pragmatic considerations so directly, clearly and precisely.

In light of its deference to the political actors on how the details of the legal framework should be fleshed out, it is not surprising that the court left more unsaid than said. It did not suggest what would constitute a clear majority or a clear question. The court did not describe or proscribe the negotiation process; nor did the court advise when the political actors should flesh out the details of the preconditions to constitutional negotiations and who should be involved in the process of clarification.

The Supreme Court decision does not mandate legislation in the form of Bill C-20 or any other form but, at most, advises political action, which can take many forms short of legislation, as many other honourable senators have already outlined. This point was effectively raised by Senator Nolin, for instance, in the *Debates of the Senate* of March 23, 2000, and one to which Senator Boudreau, the Leader of the Government in the Senate, was rather evasive and unhelpful in his response. Thus, the Supreme Court of Canada did not mandate a clarity law and the government is not merely carrying out the mandate of the court but making a political choice of its own on how to proceed in this matter. By proceeding by way of legislation, the government may even pull the court back into the political realm it was trying to avoid.

One of the remarkable features of Bill C-20 is its focus on the House of Commons as the democratic representative of the Canadian people to the virtual exclusion of other political actors such as the Senate of Canada and other levels of government. In its vital passage on the setting of preconditions to the constitutional duty to negotiate, the court emphasized the underlying constitutional principle of democracy in referring to whom should take the political lead in the process of constitutional change. The court stated:

The federalism principle, in conjunction with the democratic principle, dictates that the clear repudiation of the existing constitutional order and the clear expression of the desire to pursue secession by the population of a province would give rise to a reciprocal obligation on all parties to Confederation to negotiate constitutional changes to respond to that desire.

There is no expressed reference to the House of Commons in the above passage and it more logically refers to the executive levels of government that would normally initiate the process of negotiating any constitutional change, including secession. Such exercise of executive authority has traditionally been unfettered by directions from the legislative arm of the state in any form, legislative or otherwise. The members of the cabinet at both the federal and provincial levels, who would normally be involved in initiating constitutional change, would indirectly be the "elected representatives of the participants in Confederation" referred to

in the passage in from *Reference re Secession of Quebec*. This passage does not support the focus on the House of Commons to the exclusion of the Senate and other political actors.

The federal government also appears to be following a simplified version of the principle of democracy in concentrating power in the House of Commons to the exclusion of other political actors. The Supreme Court of Canada advocates a more nuanced version of democracy, one that is tempered by other principles such as constitutionalism and the rule of law. This point was emphasized in several areas of the *Reference re Secession of Quebec* decision, as indicated and highlighted by the following passage, which states:

Canadians have never accepted that ours is a system of simple majority rule. Our principle of democracy, taken in conjunction with other constitutional principles discussed here, is richer. Constitutional government is necessarily predicated on the idea that the political representatives of the people of a province have the capacity and the power to commit the province to be bound into the future by the constitutional rules being adopted. These rules are "binding" not in the sense of frustrating the will of a majority of a province, but as defining the majority which must be consulted in order to alter the fundamental balance of political power (including the spheres of autonomy granted by the principle of federalism), individual rights, and minority rights in our society.

• (1750)

The consent of the governed is a value that is basic to our understanding of a free and democratic society. Yet democracy in any real sense of the word cannot exist without the rule of law. It is the law that creates the framework within which the "sovereign will" is to be ascertained and implemented. To be accorded legitimacy, democratic institutions must rest, ultimately, on a legal foundation. That is, they must allow for the participation of, and accountability to, the people, through public institutions created under the Constitution.

I repeat:

...through public institutions created under the Constitution.

In the last quoted passage, "public institutions created under the Constitution" includes the Senate as well as the House of Commons at the federal level.

In its careful task of delineating the respective judicial and political roles in any secession process, the Supreme Court does not speak of "elected representatives" but rather uses the broader and more inclusive term "political actors." The following passage from the decision proves this point:

The role of the Court in this Reference is limited to the identification of the relevant aspects of the Constitution in their broadest sense. We have interpreted the questions as relating to the constitutional framework within which political decisions may ultimately be made. Within that framework, the workings of the political process are complex and can only be resolved by means of political judgments and evaluations. The Court has no supervisory role over the political aspects of constitutional negotiations. Equally, the initial impetus of negotiation, namely a clear majority on a clear question in favour of secession, is subject only to political evaluation, and properly so. A right and a corresponding duty to negotiate secession cannot be built on an alleged expression of democratic will if the expression of democratic will is itself fraught with ambiguities. Only the political actors would have the information and expertise to make the appropriate judgment as to the point at which, and the circumstances in which, those ambiguities are resolved one way or the other.

The court says later on:

The task of the Court has been to clarify the legal framework within which political decisions are to be taken "under the Constitution", not to usurp the prerogatives of the political forces that operate within that framework. The obligations we have identified are binding obligations under the Constitution of Canada. However, it will be for the political actors to determine what constitutes "a clear majority on a clear question" in the circumstances under which a future referendum vote may be taken. Equally, in the event of demonstrated majority support for Quebec secession, the content and process of the negotiations will be for the political actors to settle.

Thus, one of the effects of Bill C-20 is the removal of the Senate and various other "political actors" from the process of clarifying the preconditions for a constitutional negotiation of secession. Not only is this exclusion of "political actors" not mandated by the *Reference re Secession of Quebec*, but it runs counter to the spirit of the decision, which emphasizes political inclusion. The principles of constitutionalism and the rule of law suggest that all the existing governmental institutions should be involved in any process of clarification — not just the House of Commons.

I go now to protection of minorities and the role of the Senate. One of the underlying constitutional principles emphasized by the Supreme Court of Canada in the *Reference re Secession of Quebec* is the protection of minorities, broadly defined to include not only the religious and linguistic minorities that concern the fathers of Confederation but also aboriginals and ethnic minorities in a more modern context. This principle, too, is

recognized by the Supreme Court as a tempering influence on the majoritarian aspect of democracy as a constitutional principle.

The court said:

The democracy principle, as we have emphasized, cannot be invoked to trump the principles of federalism and the rule of law, the rights of individuals and minorities, or the operation of democracy in the other provinces or in Canada as a whole.

The Senate, as everyone here knows, has historically been regarded as an institution charged with the protection of minority interests under the Constitution. That point was highlighted by the Supreme Court of Canada in a reference case relating to the Upper House in which the court concluded that the Senate could only be amended by a process that involved the provinces as well as the federal government.

**The Hon. the Speaker:** Honourable Senator Oliver, I regret to interrupt you, but your 15-minute speaking time has expired. Are you requesting leave to continue?

**Hon. Dan Hays (Deputy Leader of the Government):** Honourable senators, before dealing with the question of leave, may I ask Senator Oliver how long he thinks he will be?

**Senator Oliver:** I will be eight or nine more minutes.

**Senator Hays:** Honourable senators, I also notice it is five minutes before six o'clock. Senator Oliver will take us beyond that. Perhaps we could deal now with whether or not we will see the clock so that we do not interrupt the honourable senator again.

**The Hon. the Speaker:** Is it your wish, honourable senators, that the Speaker not see the clock at six o'clock?

**Hon. Senators:** Agreed.

**The Hon. the Speaker:** Is leave granted for the Honourable Senator Oliver to continue?

**Hon. Senators:** Agreed.

**Senator Oliver:** The following passage from the 1980 authority reads as follows:

It is, we think, proper to consider the historical background which led to the provision which was made in the Act for the creation of the Senate as part of the apparatus for the enactment of federal legislation. In the debates which occurred at the Quebec Conference in 1864, considerable time was occupied in discussing the provisions respecting the Senate. Its important purpose is stated in the following passages in speeches delivered in the debates on Confederation in the Parliament of the Province of Canada.



Sir John A. Macdonald:

In order to protect local interests and to prevent sectional jealousies, it was found requisite that the three great divisions into which British North America is separated, should be represented in the Upper House on the principle of equality. There are three great sections, having different interests, in this proposed Confederation. ...To the Upper House is to be confided the protection of sectional interests; therefore it is that the three great divisions are there equally represented for the purpose of defending such interests against the combinations of the majorities in the Assembly.

George Brown also made a similar quote at pages 35 and 38.

Bearing in mind the historical background in which the creation of the Senate as part of the federal legislative process was conceived, the words of Lord Sankey...are apt:

Inasmuch as the Act embodies a compromise under which the original Provinces agreed to federate, it is important to keep in mind that the preservation of the rights of minorities was a condition on which such minorities entered into the federation, and the foundation upon which the whole structure was subsequently erected. The process of interpretation as the years go on ought not to be allowed to dim or to whittle down the provisions of the original contract upon which the federation was founded, nor is it legitimate that any judicial construction of the provisions of ss. 91 and 92 should impose a new and different contract upon the federating bodies.

Nor is the above described role merely an historical anachronism as Professor Patrick J. Monahan argues that the more independent role played in the Senate in the 1990s can be explained with reference to the Senate's role as the protector of minorities. I quote from Professor Monahan in his book *Essentials of Canadian Law: Constitutional Law*, Toronto, 1997, when he says at page 85:

The Senate has justified its independent stand on these issues on the basis that it was protecting the constitutional rights of individuals or minorities. In the debate over the Pearson Airport legislation, for example, the Conservative senators emphasized that their concern was not with the policy of the government to the effect that certain contracts should be cancelled, but rather with the right of the developers to seek redress through the courts for the contract cancellation. A Senate committee held extensive hearings on the issues of whether access to the courts was constitutionally guaranteed, with a majority of the scholars consulted concluding that such access was implicit in a constitution founded on the rule of law.

• (1800)

In the Newfoundland schools amendment, senators objected to the proposal on the ground that it altered constitutionally protected rights of the Roman Catholic minority without their consent. These recent precedents suggest that the Senate may be attempting to define a role for itself as a legitimate protector of the constitutional rights of individuals or minorities.

In light of the range of minority interests likely to be affected by any secession process, such as provincial, regional, ethnic and aboriginal interests, it would appear contrary to the protection of minorities principles enunciated by the Supreme Court in *Reference re Secession of Quebec* to exclude the Senate from the process of clarifying the preconditions to constitutional negotiations.

It is ironic that the so-called clarity bill, Bill C-20, may produce more confusion than clarity in respect to the proper political process for settling preconditions to constitutional negotiations on secession. This irony has been emphasized by many opponents of Bill C-20, including the Leader of the Progressive Conservative Party, Joe Clarke. At most, the bill provides a political framework rather than clear answers to the vital questions raised by the Supreme Court of Canada.

In *Reference re Secession of Quebec*, for instance, the court was deliberately silent about how the political actors should clarify the preconditions to negotiation or when they should do so. Mary Dawson, in her article from which I quoted at the outset of my remarks, underscores this point when she says:

On what would constitute a clear question, we have little guidance from the Court. It would seem apparent that the question asked must be free from ambiguity and must relate directly to what is to be negotiated. If one question is asked, negotiations would not be mandated for another question. What would seem to be of great importance would be broad acceptance of the clarity of the question.

Bill C-20 is also problematic for what it says as well as for what it does not say. It sets a specific timetable for responding to a secession question once it has been raised. By so doing, it restricts the flexibility of the federal government in responding to a situation, should one arise.

Professor Monahan, in a study done for the C.D. Howe Institute, argues that Bill C-20 should provide more guidance on what constitutes a clear majority. On the other hand, he suggests that the bill goes beyond the Supreme Court's mandate by deeming any referendum question that includes references to post-secession economic or political arrangements "unclear". In his view, such references should be taken into account but not ruled out in advance.



There are many more problems with Bill C-20 that could be explored, but time does not allow for such elaboration.

In conclusion, honourable senators, Bill C-20, however well-intentioned it may be, is a flawed attempt to heed the advice of the Supreme Court of Canada in its reference decision. Not only does it produce confusion rather than clarity, but, by its exclusion of the Senate and other constitutionally recognized political actors, it runs counter to the underlying constitutional principles of constitutionalism and the protection of minorities enunciated in the very Supreme Court decision that Bill C-20 claims to implement. The bill must be amended, at the very least, if it is to accord with the language and spirit of the *Reference re Secession of Quebec*.

[Translation]

**Hon. Marie P. Poulin:** Honourable senators, like all of you, I took a long look at Bill C-20, the clarity bill, and like some of you, I wondered about the role the Senate would play.

I therefore paid close attention to our debates on the possible impact of this bill, and I am grateful for the insightful comments that were made.

After many discussions and serious reflection, I want to say that I fully agree with the principles of Bill C-20. This bill gives us an opportunity to define our own role in the unfortunate context of a referendum.

Like you, I sincerely hope that this situation will not arise again, because, like most Canadians, I am concerned about how little the separatists care about the democratic process.

Twice they held a referendum in Quebec, and both times a majority of Quebecers chose to remain an integral part of our Canadian federation. Like you, I was relieved by the result, because Quebec plays a unique and essential role in that federation. Honourable senators, how many times will Quebecers have to say no to the separatists?

This reminds me of the days when I was in primary school. There was always someone who wanted to change the rules when we were playing marbles and the opponent was losing. Now, thanks to Bill C-20 on clarity, all Canadians, including the separatists, will know the rules of the game.

Generally speaking, Canadians are in favour of this constitutional and legislative framework for secession. The 1980 and 1995 referendums in Quebec deeply shook our certainties, and in more ways than one. For example, we now had to recognize that the secession of a province was a possibility that could no longer be dismissed.

These two referendums also provided an opportunity for all Canadians to witness the political opportunism of which the

secessionist forces are capable. They cleverly took advantage of the absence of constitutional rules and federal legislation and took over the process secession. Need I point out that this PQ process, which is based largely on the principle that the end justifies the means, takes no account of Quebec's partners in the Canadian federation?

In such a context, the Government of Canada could no longer continue to navigate the troubled waters of this desire to secede unilaterally from our federation without something to guide it. The federal government had to take concrete action and indicate clearly to Canadians what it would do if one province asked its citizens to vote on secession.

The Government of Canada did something that shows great political wisdom. First of all, it sought the opinion of the highest court in the land, and in the full assurance of the legitimate role of the political players, as confirmed by the Supreme Court, it then introduced a bill giving effect to that opinion.

[English]

The Supreme Court of Canada gave Parliament the responsibility of defining the rules. That is what Bill C-20 does. In the regrettable event of a referendum, motions would be presented in the other place regarding the clarity of the wording and the required majority. The Senate would not vote on those motions that would be put before the other place. However, we would not be out of the picture because we would be expected to give strong advice to the other place. In this chamber, there is a very strong common thread that binds every one of us, whether Liberal, Conservative, or independent, and that is our belief in the strength of a united Canada, a federation of 10 provinces and three territories in this new world without borders.

I am sure that none of us wants to utter a single word of encouragement to those who would break up this country. There are enough of those in the other place. We should let them know clearly and without reservation where we stand at the right time. As senators, we would be in a position to strongly influence public opinion and, thereby, the provinces.

We should begin to think of using the authority of our office constructively by building on the opportunity that has been provided in this clarity bill; that is, the opportunity of making our views known to the government and the people of Canada.

The government has committed itself to taking our views into account. Thus, we should do our utmost to make them as valuable and reliable as we possibly can. Therefore, the real challenge is for this chamber to identify the mechanisms which would immediately become activated in the Senate in the context of a referendum. This is what we should be concentrating our efforts on.

We must reconcile the perception that we would have no responsibility if ever this legislation were acted upon. My view is quite the contrary. Not only does the clarity bill say that the government would take note of formal statements or resolutions passed by the Senate in regard to the clarity of a referendum question — I refer to clause 1(5) — it would also extend this responsibility to the issue of what constitutes a majority — I refer to clause 2(3).

Honourable senators, I ask myself and I ask you: What mechanisms will we adopt to ensure that the upper house of the Parliament of Canada has its own clear plan to fulfil its role as key advisor on the motions that may be put before the other place if ever, unfortunately, there were a referendum?

• (1810)

**Hon. Douglas Roche:** Honourable senators, we are faced in the debate on Bill C-20 with the momentous question of how to preserve the unity of Canada. We are also faced with a diminishment of the role of the Senate, which will have profound consequence for the future working of the Parliament of Canada.

These are two issues that clash in Bill C-20. The bill's implications affect not only the future of Canada but also the future of the Senate.

As one member of Canada's Parliament — for that is what I am — I am torn. Part of me wants to go one way on the bill; part of me wants to go another. What shall I do?

I have, of course, studied the eloquent speeches of the Leader of the Government and the Leader and Deputy Leader of the Opposition. The opposing views are so powerfully presented — each side makes such a strong case — that one is tempted to hide. As an independent senator, I cannot hide. In the end, I have to vote for or against this bill using, God help me, my own intellectual resources.

The only way that I can, in an orderly way, approach the bill is to separate for the moment the two issues: the requirement for clarity and the role of the Senate.

First, as to the requirement for clarity, I begin by asking myself a key question that has been brought forward: Is Canada divisible? Those who hold that Canada is indivisible make the point that the bill is *ultra vires*. They say that the government has no right to introduce legislation that would make secession legal. Therefore, they oppose the principle of the bill.

However, I maintain that there is nothing in our Constitution that says that Canada is indivisible. All states are, in theory,

inviolable, but practical politics over the past 30 years have, if nothing else, given de facto legitimacy to the idea of separation. The whole Quebec debate has turned on the fact that if Quebecers get serious about secession, they have the legal right to seek it through constitutional amendment. That is, in effect, what the Supreme Court said. Thus, I recognize the objective of the bill.

Honourable senators, it behooves the Government of Canada to address any question of secession in a responsible manner — before the event, rather than just picking up the pieces as best it could, as would have occurred had a narrow margin of Quebec voters gone the other way in 1995.

Let us cast aside immediately the spurious notion that Canada has to have a Plan A or a Plan B to hold Quebec in Confederation, as if they were mutually exclusive. Canada needs a Plan A, showing the benefits of this great country to the people of all provinces; and it needs a Plan B, spelling out the ground rules if any province decides to negotiate its departure.

Underlying Bill C-20 is the recognition that something went wrong in the 1995 Quebec referendum. At that time, there were false beliefs that a Yes vote would merely lead to negotiations between Quebec and Ottawa. There were false beliefs that a majority Yes vote would only act as a bigger bargaining chip for Quebec within future Canadian constitutional negotiations.

These dangerous illusions came close to creating the most serious constitutional crisis in Canadian history. We discovered later that the secessionist Government of Quebec indeed intended the referendum to lead to a unilateral declaration of independence. The referendum question was, in fact, ambiguous in its wording and its intent. Polls demonstrated that the people of Quebec voted in confusion in what was one of the most important decisions they could ever make.

As a result, there has been a drastic change in attitude among Quebec's people toward their politicians. Their trust in them has weakened. Federalists in particular, whether anglophone, aboriginal or allophone, feel their representatives failed to defend their constitutional rights. It is for the Government of Canada to defend the rights of its citizens under the principles of federalism, democracy, constitutionalism and the rule of law, and the protection of minorities. This is what has been done in the new federal guidelines that Bill C-20 would legislate.

In Bill C-20, honourable senators, the government has exercised its responsibility to recognize the demands for a clear legal framework that safeguards the constitutional rights of the people of Quebec and all other provinces, as recognized by the Supreme Court. This bill will give legislative effect to the opinion handed down by the Supreme Court in the *Reference re Secession of Quebec* of August 20, 1998. The Supreme Court then ruled that Quebec's secession from Canada, in order to be legal and constitutional, would have to be based on a clear democratic expression of the will of the people of Quebec through a clear question put to them in a referendum.



Bill C-20 states the circumstances under which the federal government would be obliged to enter into negotiations on the possible secession of a Canadian province. The bill does not establish a framework for a referendum. Rather, it sets a framework for the federal government in entering negotiations. The bill specifically asks for political decisions on two pivotal issues: the clarity of the question and the clarity of the result of any referendum.

No province can secede unilaterally; an amendment to the Constitution would be required. An amendment cannot be introduced by the federal government until a series of negotiations ranging from the division of assets and liabilities to changes in borders, aboriginal claims, and minority rights is completed and accepted.

• (1820)

In short, by eliminating uncertainties, Bill C-20 will do a service to the people of Quebec and to all Canadians by restoring the rule of law to any future referendum process.

Opponents of the legislation charge that it is undemocratic, that it straitjackets Quebec, and that it is but a legal solution to an entrenched political problem. I do not accept this. We should welcome the principle of Bill C-20 because it ensures that the law, as it should, informs and shapes political debate — in this particular case, the unity of Canada.

Honourable senators, it is difficult to sustain the argument that the bill prevents the people of Quebec from freely choosing their own destiny. The bill does nothing of the sort, as its principles apply only to the federal government. Any province may hold a referendum any time it likes, on any question, under any rules, but the federal government cannot accept the result as a basis for negotiations, except on the terms handed down by the Supreme Court and given effect in Bill C-20.

The only constraint upon a secessionist province that could be discerned in this legislation is that the act of secession must be negotiated. It is difficult to accept that the federal government is acting undemocratically by insisting that such monumental negotiations, should there ever be any, take place within the law.

It is not only for the separatists to set the terms of the unity debate. All Canadians naturally have a stake in the future of the country. Their interests must be effectively voiced by their representatives in Ottawa.

Honourable senators, I now come to the role of the Senate. Here the government has made a grave error, and that error must be corrected by the Senate itself.

As Bill C-20 reads, in the determination of clarity, the Senate is able only to give its views to the House of Commons. Yes, the House of Commons "shall take into account" such views. However, in the end, it will be the House of Commons that determines whether clarity exists. Hence, the House of Commons

alone will have the capacity to legally permit or prohibit the Government of Canada from entering into negotiations on the secession of any province.

I must say, as a former member of the House of Commons, that I think this is not a good idea. To restrict to one chamber the determination of clarity on a question of monumental importance to the country shortchanges the national interest. Also, the bisection of a bicameral legislature in Canada's Parliament thwarts the very Constitution that has made the Senate an integral part of Canada's Parliament.

Much has been made of the Supreme Court's references to "elected representatives" who must determine the conduct of negotiations for constitutional separation, but the Supreme Court did not exclude the Senate from fully participating in the determination of clarity, a determination that must be made prior to any such negotiations.

In using the term "political actors" as a synonym for elected representatives, this bill is too clever by half. The obfuscation practised by the drafters of the bill in trying to pretend that only the House of Commons should have a determinative role, with the Senate relegated to an advisory role, poisons the legislation. The constitutional structure of the country's governance is weakened by the very bill that purports to save the country. The Supreme Court wants "political actors" who have the "information and expertise" to make appropriate judgments. Well, the Senate is a constitutionally based political actor.

Let us be very clear on what the Senate can and cannot do. As with any piece of legislation, the Senate has a determinative role in the assessment of political issues. It will be a political judgment whether a question and a majority vote possess clarity. The Senate must be inextricably involved in such a political decision. However, the Senate cannot exercise a permanent veto in constitutional questions. It is for the House of Commons, comprised of elected representatives, to supervise constitutional negotiations concerning secession.

Therefore, let us separate out the Senate's necessary action in the political determination of clarity and the inability of the Senate to permanently veto constitutional change. The government must stop confusing the legal identification of clarity with the conduct of constitutional negotiations.

The bill must be amended to make it clear that the Senate equally shares with the House of Commons in the determination of clarity. That is the only way this bill can be saved with any integrity.

I respectfully propose that the determination of clarity be entrusted to a joint committee of the House of Commons and the Senate. This special committee, composed of representatives of both Houses of Parliament, would make the decision on clarity, which would, of course, be sent to the House of Commons and the Senate for ratification.



Let us not hear that this bill is closed to amendments because the government does not want to reopen the debate in the House of Commons. Let us not hear that those senators who have genuine concerns based on their experience and expertise will not be allowed to voice and vote those concerns. Let us not hear that the government leadership in the Senate is impervious to this flaw in Bill C-20, a flaw so serious that it will open the door to continued diminishment of the Senate.

In order to give this bill the proper attention such an extraordinary piece of legislation demands, I further respectfully propose that, upon second reading, the bill be referred to the Senate's Committee of the Whole for the purpose of hearing witnesses and making a report. Within Committee of the Whole, all senators can have the opportunity of appraising Bill C-20 in an inclusive setting. This action would itself make the point that the Senate of Canada has a structural, an instrumental and an indispensable role to play in deciding questions that cut to the heart of the future of Canada.

I have shared with honourable senators my hopes and fears engendered by Bill C-20. I do not shrink from my duty as a senator to help bring clarity to any future referendum on secession. I do not shrink from my duty to uphold the constitutional role of the Senate. We must bring our political processes together in Canada. To do that, Canada's Parliament — the whole Parliament — must work together.

The need for clarity is uppermost. The consequences of persistent uncertainty over the status of Quebec given a Yes vote in any future referendum have been seriously detrimental to the province and to Canada as a whole. Political uncertainty has led to economic decline, stunted investment, and the relocation of many businesses and the fracturing of families.

Quebec columnist Alain Dubuc has insisted that the beginning of the 21st century must be seized to "turn the page" and change political priorities and traditions in the province. He called for the beginning of a new chapter in Quebec's history to free itself from the vicious circle of federal-provincial quarrels and constitutional wrangling.

**The Hon. the Speaker:** Honourable Senator Roche, I regret I must inform you that your 15-minute speaking time has expired.

**Senator Roche:** I am on the last page of my speech, honourable senators.

**Senator Hays:** Could I ask Senator Roche how long he thinks he will be?

**Senator Kinsella:** He just told us — one page.

**The Hon. the Speaker:** Senator Roche advises he is on his last page.

Is leave granted, honourable senators?

**Hon. Senators:** Agreed.

**Senator Roche:** Alain Dubuc called for the beginning of a new chapter in Quebec's history to free itself from the vicious circle of federal-provincial quarrels and constitutional wrangling. I want to see this sentiment extended to the entire country. Together in unity, Canada, with its rich natural and physical resources, will be ideally placed to work for a humane, just and peaceful world.

[Translation]

• (1830)

**Hon. Jean-Claude Rivest:** Honourable senators, given the importance of this bill, I should like to share with you a few rather simple thoughts.

I willingly agree that the Canadian government can, must even, express its opinion on the clarity of the referendum question and the majority required. It can also determine the way it will do so, with the House of Commons and the Senate. I trust that the government is aware of the fact that the Senate must be more than a mere lobby group when such an important matter is at stake.

This unacceptable action by the Government of Canada is deceiving the people of Canada. A number of senators have expressed similar opinions. This bill would guarantee Canadians and Quebecers that the next referendum would, of necessity, address solely and exclusively secession or the creation of an independent Quebec.

Everyone needs to clearly understand that, independent of the existence or non-existence of this bill, whether we like it or not, whether we pass it or not, if there is another referendum in Quebec — which is not something I want to see — it will be on article 1 of the Parti Québécois program, which calls for the sovereignty of Quebec coupled with an association or partnership with Canada.

This bill tells Canadians that partnership cannot be mentioned, because the referendum question would not be clear. Canadians, Quebecers, the Parliament of Canada, the Senate, everyone, will have to face up to this reality, even if the bill should be passed. If there is a referendum at some point, that is what its focus will be.

What will the reaction of Canadians be? The government has sent Canadians the message that Bill C-20 was not complicated, and that any future referendum will be only on separation. The reaction of Canadians will be: "But Mr. Chrétien told us that if there were a referendum it would be on separation. Now there is one, but it is on the Parti Québécois program; Mr. Chrétien has deceived us". Thought needs to be given to how credible the Canadian public will perceive the Prime Minister of Canada to be, when he has misled them.

Can a senator in this house guarantee that the question resulting from this bill could be: "Do you want Quebec to become an independent country, yes or no?" If so, I will support the bill. However, you are unable to guarantee that. Canadians understood that, as evidenced by the polls.

This is the constitutional policy of the current federal government on this issue and it does not make sense. You should reflect on what the Prime Minister told Canadians before the 1995 referendum. He said there was no longer any problem, that we would no longer talk about the Constitution. Remember what he said during the 1993 election campaign. Canadians believed him because the Prime Minister of Canada is a man to be trusted. They voted for him and they ended up with the closest possible referendum result. At that point, the same Prime Minister came and told them that he had a historic project to ensure that the next question would be clear and would be on independence. That is not true. The next referendum will be on the platform of the Parti Québécois. No one in the Senate or in the House of Commons can tell me that there is a single Quebecer who would accept that Jean Chrétien or Stéphane Dion rewrite section 1 of the Parti Québécois platform. Forget it, it will not happen! This expression of the Canadian government's policy on the national unity issue upsets me. This serious problem is not due to three or four people like Lucien Bouchard or Jacques Parizeau, but to two or three million Quebecers who voted for sovereignty on a question which, supposedly, is not clear. They did not vote yes by accident or because they did not understand the question. These same two or three million Quebecers elected a separatist government, and they have done so a number of times. Why? Because the electoral issue is not clear?

The problem of national unity raised by the presence of sovereignists in Quebec has nothing to do with the clarity of the question. We can make all sorts of assumptions as to why such an artificial and useless bill as this was put forward before the convention of the Liberal Party of Canada when the leadership of the Prime Minister was in doubt.

I am quite indifferent to the fact that many Quebecers argue that this bill infringes on the powers of the National Assembly. I do not think this the case, because the National Assembly may continue to do what it will quite freely. Minister Dion has said so, and I think he is right. Sovereignists will put a question on sovereignty-association and sovereignty-partnership, you can be sure of that.

Mr. Dion is the Minister of Intergovernmental Affairs and he is very pleasant, very learned and very interesting. However, all he does, from Quebec's standpoint, is go after the PQ. It is his policy, he answers the PQ. It is interesting and always well documented, but it does not further the cause of federalism in Quebec.

In Canada, from a historic standpoint, this is not a problem to be settled soon. All the prime ministers, from Macdonald to

Laurier, have talked about national unity. It is hard to maintain national unity in Canada. This country has a history, two peoples, two nations, First Nations and, geographically, it is very big. National unity will be a constant element of the Canadian reality. To unify this country requires listening skills, understanding, openness and generosity toward all the regions and nations comprising Canada.

It does not require short-lived bans as unnecessary as this bill. Look at what recent prime ministers did when the problem first began to arise. Mr. Pearson set up the Laurendeau-Dunton commission. He organized the Canada Tomorrow Conference. He gave Canada its own flag. He had a national unity policy. Mr. Trudeau reformed the public service in order to convince Quebecers and francophones that they had a place. He told Quebecers that they could play an important role in the decisions of this country, a role commensurate with their importance. As part of globalization, Mr. Mulroney left Acadians and Quebecers with a free hand in the international Francophonie. It was a necessary solidarity. He proposed the Meech Lake Accord, which was a decisive document. Those who sabotaged it committed an historic and catastrophic error. They are not sitting on this side of the house.

It matters little that these policies did not completely resolve the problem of Canadian unity. It is an almost permanent problem in this country's very structure. Whatever one may think, these prime ministers had a national unity policy. I do not wish to say that the Prime Minister is not convinced of the importance of national unity — it is his passion. I have great respect for him on this topic. However, his policy is not on a par with his convictions and tricks like this unnecessary bill will lead the Canadian people astray. He will give them guarantees he is not in a position to deliver on. This will have a boomerang effect on his credibility and on that of the Canadian government.

The way this bill will work is not ideal. The question will be on sovereignty-association. As I said to the government critic, will federal ministers take part in the referendum campaign? Will federal political parties, including Quebecers, take part? No, because their parliament will have decided that the question is not clear and that it does not meet the conditions of the legislation it has passed. You thus weaken federalist forces in Quebec.

Then the government is going to say that it will not negotiate, that the book is closed. Let us assume that the question is on sovereignty-association, as it will be. This is a fact, like it or not, and let us assume that 60 per cent or 65 per cent vote in favour. Your reaction will be that the question is not clear, that you will not negotiate, and that is it. That is what the bill says. What will this have solved? The three or four million people who have voted are not going anywhere. They cannot be made to disappear with pepper spray!



I strongly disapprove of this bill. It appears to be aimed at safeguarding national unity. I do not want to see it ever applied. I, like everyone else in the Senate, do not want to see any referendum. If, however, we are obliged to apply it, it is going to create problems that will be destructive to national unity. It will have the opposite of its desired effect. Today, no one is particularly bothered about this bill. It is not getting people riled up. This is further evidence of the fact that application of this bill will have a negative effect. No one in Quebec or in the rest of Canada is interested in this bill. It has come out of nowhere.

If the Parti Québécois held a referendum, it would be as if this bill never existed. There will be referendum. No one wants it. It will be on sovereignty-association. It will be said that it is muddled, and the question is not clear. Naturally, they can say that. This bill provides no help at all. It will not change a single yes vote to a no. It will change absolutely nothing. It is all very well to have the bill and the Parliament of Canada say the question is not clear, the Parti Québécois will say there will be sovereignty and then association. It will not change its tune. This bill does not change anything on that score. The impact on voters will be unchanged; the electors' understanding of the issues will be the same. The voters will listen to speeches and announcements on TV, all the elements of a democratic debate. The Parti Québécois will sell its line, and we will find ourselves exactly where we left off. The bill is useless.

I will vote against this bill, which deceives Canadian public opinion and, more damaging yet, misleads Canadians. It is doubtless unintentional, but it is a fact. The Prime Minister of Canada told the Liberal Party convention that this was the most important bill of his career, because with it he was sure the question would be clear. That is not true. The question will be one the PQ has chosen, despite this bill that deceives Canadians.

An institution like the Senate should be able to tell all Canadians that this bill is a mistake. No one can contradict me on that. If I am right, the senators who are aware of their responsibility should tell the government and Canadians to be careful, because this bill will not achieve its goals. It sidesteps the basic question of the relationship between Quebec and Canadian society. It contributes absolutely nothing apart from the squabbling of the PQ Minister of Intergovernmental Relations.

As a Quebec and Canadian senator, I will vote against this bill.

On motion of Senator Robichaud (*L'Acadie-Acadia*), debate adjourned.

[English]

• (1850)

## DIVORCE ACT

BILL TO AMEND—SECOND READING—DEBATE CONTINUED

On the Order:

Resuming debate on the motion of the Honourable Senator Cools, seconded by the Honourable Senator Chalifoux, for the second reading of Bill S-12, to amend the Divorce Act (child of the marriage).—(*Honourable Senator Cools*).

**Hon. Anne C. Cools:** Honourable senators, I rise to speak to Bill S-12, to amend the Divorce Act. This bill is about the legal obligation imposed by the Divorce Act on divorced parents to pay child support for their children who are older than the age of majority and who are, in fact, adults at law. Bill S-12 will address that category of persons now inappropriately styled as adult children. The term "adult children" is an impossible schizoid legal concept that is only possible in family law.

Honourable senators, I dedicate my bill to our retired colleague Senator Duncan Jessiman, who was a soldier in the cause of children of divorce and in the cause of fairness and balance in divorce law.

On 1997's Bill C-41, that famous Senate fight on the Divorce Act, it was said that we two, Senator Jessiman and I, were a multitude. We in the Senate amended Bill C-41, trying to avert many of the terrible social and family problems that have been caused by the child support guidelines and by also the wrong — nay false — legal concept termed "adult children." This term provides its own legal condemnation. Bill S-12 will delete the words "or other cause" from the Divorce Act's definition of "child of the marriage." Those are the three words that had troubled Senator Jessiman and that judges have pummeled into the opposite of Parliament's intention. This deletion will clarify the statutory economic obligations of divorced spouses to their adult offspring and, particularly, will clarify economic relations between divorced spouses to each other in respect of their adult offspring pursuant to the Divorce Act.

Honourable senators, I shall relate the background of Senator Jessiman's, other senators' and my 1997 work on that deeply flawed bill, Bill C-41, to amend the Divorce Act, the Family Orders and Agreements Enforcement Assistance Act, the Garnishment, Attachment and Pension Diversion Act and the Canada Shipping Act.

Bill C-41 had been an amendment to the 1986 Divorce Act, whose primary purpose had been to create child support guidelines. The instrument for creating these guidelines was regulations, what we call delegated legislation. Clause 11 of Bill C-41 created section 26.1 of the current Divorce Act, which in turn established regulations to the Divorce Act, being a set of tables and table amounts, dollar quantum, as directives to the courts and judges.



These regulations were styled the child support guidelines. This method of giving direction to justices, by regulations and delegated legislation, was unprecedented, unparliamentary and was as questionable then as it is now. These guidelines instituted a new legal and economic regime in child support in family law. This regime devised calculations of child support guidelines that would disregard the custodial parent's income, mostly mothers, and would be based on and paid only by the non-custodial parent's income, mostly fathers.

To do this, Bill C-41, in its clause 2. and clause 5.(5), proposed, unsuccessfully due to the Senate, to repeal those provisions of the 1986 Divorce Act, being sections 15.(8) and 17.(8), which gave children of divorce their entitlement to financial support from both parents, both mothers and fathers, according to their means. Those sections were important, not only for the Divorce Act but also because they are one of only two federal statutes in which the entitlement of children was ever placed into law.

The proposed repealed provision, section 15.(8) as the similar 17.(8) read:

An order made under this section that provides for the support of a child of the marriage should

(a) recognize that the spouses have a joint financial obligation to maintain the child; and

(b) apportion that obligation between the spouses according to their relative abilities to contribute to the performance of the obligation.

I repeat, Bill C-41 would have repealed mutuality — the mutual obligation of both parents to financially support their children — and instead would have substituted a regime that placed the burden for financial support on the shoulders of one parent only, the non-custodial parent, mostly fathers.

Honourable senators, those provisions, those sections of the Divorce Act, had been equality sections directed at economic independence and self-sufficiency for women. They had been part of the family law reforms of the late 1970s and early 1980s wherein marriage and divorce were intended to be founded on equality between spouses in assets, liabilities and parenting.

Bill C-41 rejected equality for women and created the guidelines by repealing the obligation of both parents, mothers and fathers, to financially support their children. In this regressive and backward action, it proposed that payments of financial support for children would be the liability and responsibility of the non-custodial parent, the paying parent, mostly fathers.

I vividly remember Senator Jessiman's distress as a lawyer and a senator when I brought this to his notice. Of interest is that Bill C-41 had also neglected, not accidentally, to address the

relationship of the non-custodial parent, the paying parent, mostly fathers, with their children. It intentionally ignored the custody and access question.

Senator Jessiman and I adopted the position that Bill C-41 and its child support guideline regulations were deeply flawed. We upheld the need for fairness, balance and equilibrium in divorce and family law. Most Canadians are deeply indebted to him and to those senators who supported us. The public support for the Senate in those actions was unparalleled and unequalled before or since.

Honourable senators, then as now I assert that the econometric model on which the child support guidelines was based specifically and deliberately abandoned the objects of fairness and child-centredness. Bill C-41 was a blatant and unveiled attempt to increase the level and quantum of money payments made by support paying parents, mostly fathers, to support receiving parents, mostly mothers.

Bill C-41's child support guidelines had been constructed on a particular Statistics Canada econometric model that Statistics Canada itself had later described as arbitrary and inaccurate in its August 1999 publication "Low income measures, low income after-tax cut-offs and low income after-tax measures."

The expenditure model itself was inadequate to the task. In the Standing Senate Committee on Social Affairs, Science and Technology neither did then Liberal minister of justice Allan Rock nor his departmental officials provide the senators with sufficient information, explanation and justification about the model itself.

The evidence indicates that the child support guidelines were never about the best interests of children but were instead about a transfer of wealth from support-paying parents, mostly fathers, to support-receiving parents, mostly mothers, under the guise of child support.

The child support guidelines used a design model intended to punish support-paying parents and intended to drive non-custodial parents, mostly fathers, out of their children's lives, and reinforced the fracturing of relationships between children and parents in divorce.

The child support guidelines were bad economics, bad public policy and bad family law. That a purely feminist ideological theory on economic relations between men and women should be constructed into regulations under the Divorce Act, under the guise and title of child support, is a serious matter and deserves study.

Honourable senators, prior to the Senate's encounter with Bill C-41, Queen's University Law Professor Nicholas Bala wrote about the guidelines in a 1996 article entitled "Ottawa's New Child Support Regime: A Guide to the Guidelines." He said, at page 311:

One of the most controversial aspects of the guidelines is that the assessment of child support will begin with the payer's income alone.... This focus on the payer's income and ignoring the custodial parent's income seems inconsistent with the objective of having the child benefit from 'the financial means of both parents'.

Good public policy and the best interests of the child dictate that the department's modelers should have utilized a econometric model that took account of both parents', both mothers' and fathers', incomes and household size. The department should have utilized an income-shares model.

As senators know, we amended clause 11 of Bill C-41 and reinstated into the divorce law that important principle that Bill C-41 had proposed to repeal, being that a child of divorce is entitled to the financial support of both parents, both mothers and fathers.

The result was that the current provision of the Divorce Act establishing the regulation guidelines, section 26.1(2), now reads:

The guidelines shall be based on the principle that spouses have a joint financial obligation to maintain the children of the marriage in accordance with their relative abilities to contribute to the performance of that obligation.

• (1900)

Honourable senators, children are little persons who need the financial support of both their parents. Both parents must have meaningful relationships and meaningful involvement in their children's lives.

I turn now to the subject of Bill S-12, the adult offspring of divorce, a favourite concern of Senator Jessiman's. The issue is the age to which parents are compelled, by force of law, by statute, by the Divorce Act, to financially support their offspring. From 1968 to 1997, that age was 16 years. In 1997, Bill C-41 raised that statutory age from 16 years to the age of majority for most offspring, and past the age of majority for the ill and disabled, and also proposed, unsuccessfully, support for those adult offspring who were pursuing post-secondary education. En passant, by the Divorce Act, the age of majority is the age set by the laws of the province in which the child ordinarily resides or, if the child ordinarily resides outside Canada, is eighteen years of age.

Honourable senators, support or maintenance of adult offspring bears some discussion. Many of us believe that after

their children reach the age of majority parents of means have a moral, but not a statutory, obligation to support needy or distressed adult offspring. Conversely, needy adult offspring who are mentally and physically capable have a corollary moral obligation to negotiate such needed financial assistance with their parents from a cooperative, or at the least a non-hostile, posture.

Such negotiations, such mutual support and assistance, form an important role in most families, and rightly so, for that is the function of families — cooperation and support in need. Mutual support, mutual relations, and mutual cooperation are the essence of adult family relationships, particularly those with financial and economic dimensions. In financial matters in adult relationships between able persons, mutual agreement is the natural order. Mutual agreement is the natural order that governs the exchange of money and economic relations between human beings. That is especially true in families. The exchange of money and financial assistance between adult family members in all families is always vulnerable, but that is particularly so in divorced families.

These financial exchanges in families are highly responsive to particular human factors and peculiar human needs, which include humane consideration and interaction, and humane dialogue. Financial exchange is a function of human and humane exchange.

Now let us look at divorce, and what the Divorce Act has to say about adult offspring of divorced parents, adults who are the issue of the marriage, and their economic relationship to their divorced parents.

Honourable senators, I have explained the development of the definition of the legal term "child of the marriage" from 1968 until now for the purposes of court ordered child support. Like the 1968 act, the 1986 Divorce Act, section 2(1), defined "child of the marriage" as follows:

... "child of the marriage" means a child of two spouses or former spouses who, at the material time,

(a) is under the age of sixteen years, or

(b) is sixteen years of age or over and under their charge but unable, by reason of illness, disability or other cause, to withdraw from their charge or to obtain the necessities of life;

Bill C-41's definition of child of the marriage expanded the statutory age for parental support from 16 years to the age of majority, and also proposed artificially to expand it beyond the age of majority to include university students. It did so by including the words "pursuit of reasonable education" after the words "illness and disability" and before the words "or other cause", thereby enmeshing university education with serious uncontrolled disability, therein proposing to redefine the adult offspring university student as a child of the marriage.



Bill C-41's clause 1(2) stated that a child of the marriage is one that:

(a) is under the age of majority and who has not withdrawn from their charge, or

(b) is the age of majority or over and under their charge but unable, by reason of illness, disability, pursuit of reasonable education or other cause, to withdraw from their charge or to obtain the necessities of life;

The Senate amended Bill C-41 to delete the words "pursuit of reasonable education" so that section 2(1) of the current Divorce Act reads exactly as did Bill C-41, minus those four words.

Honourable senators, on February 13, 1997, at third reading of Bill C-41, Senator Jessiman explained our deletion of the words "pursuit of reasonable education" from the definition of "child of the marriage". He also explained the problem with the interpretation of the words "or other cause" in the courts, saying, at page 1539 of *Debates of the Senate*:

Another part of the bill we were unhappy with was a proposed amendment to the Divorce Act to codify what the courts have determined is the present law under the act — that is, that pursuit of reasonable education is, in some circumstances, a reason to compel a divorced, non-custodial spouse to continue to pay child support to the custodial spouse for a child even though the child has reached the age of majority and in some cases is in his late twenties.

Senator Jessiman told us that the judges had used the words "or other cause" to create parental obligation to pay child maintenance to ex-spouses for adult offspring through university. He continued:

It is the words "other cause" that the courts have said allow such interpretation, that is, that the pursuit of reasonable education falls within "other cause". The courts have held that the *ejusdem generis* rule does not apply because the words "illness and disability" are all encompassing and "other cause" would be redundant or have no meaning, if the courts applied the rule. The courts have ruled that it must have been the intention of Parliament to give meaning to such words.

It was the view of senators on this side of the chamber that the courts were wrong and have been wrong.

Honourable senators. Senator Jessiman showed clearly that the courts' interpretation was wrong because it would mean that a child of divorce would have greater rights than a child of an intact married couple. This very question was profoundly posed by Justices Tallis, Cameron, and Gerwing in the 1996 Saskatchewan Court of Appeal case *Bradley v. Zaba*. They said, at paragraph 10, Report of Family Law, Volume 1, Fourth Series:

A further consideration is whether the child could have reasonably expected one or both of the parents to have continued to furnish support if the marriage had not broken down.

This pivotal point turns on the process by which divorced parents have acquired a statutory obligation that intact married parents do not have, and consequently, on the process by which children of divorce have acquired greater rights to university education than children of intact marriages have. It turns on the difference between legal obligations and moral obligations, and on how the courts have transformed the moral obligation of divorced parents to provide financial support to adult offspring during university years into a legal obligation by using the words "or other cause". Senator Jessiman told us that these obligations and duties are exclusive to divorced parents, and are not possessed by intact married families.

Honourable senators, the true nature of child support payments for adult offspring paid by non-custodial parents to custodial parents, pursuant to the statutory definition of adult offspring as children of the marriage who are in the custody of the custodial parent, is seen by examining the Income Tax Act and its treatment of child support payments and the 1997 Bill C-93 amendment to that act.

• (1910)

Bill C-93's long title was An Act to amend the Income Tax Act, the Income Tax Application Rules and another Act related to the income Tax Act. Bill C-93 was a companion act to Bill C-41. From 1942 until 1997, the Income Tax Act had treated child support payments pursuant to divorce or court orders as a tax deduction for the paying parent. This allowed income tax to be paid at the lower earner's tax rate. That scheme was intended to benefit women, because they received the money, income from ex-husbands, and could pay little or at least less income tax. This scheme gave the advantage to women and maximized child support payments. It kept more money in divorced families' hands, especially women's.

In 1997, inspired by the Supreme Court of Canada's 1995 *R. v. Thibodeau* decision, Bill C-93 amended the Income Tax Act to end that regime. The result was a tax windfall to the government and a loss to divorced families, particularly lower income women. About this windfall, on December 12, 1996, then Minister of Justice Rock told the Senate Committee on Social Affairs, Science and Technology that it would amount to about \$1 billion dollars over the next five years.



Honourable senators, from 1942 to 1997, the singular purpose for non-custodial parents, by agreement, to pay child support payments to the custodial parent for adult offspring in university had been this beneficial tax treatment. Under the Divorce Act, in financial support of adult offspring in university, the dominant issue has always been who should be the recipient of that money, the custodial parent or the adult child. Most adult offspring want that money paid to them directly. Most non-custodial parents wish to pay that money directly to their offspring. The singular purpose since 1942 for paying parents, mostly non-custodial fathers, to pay receiving parents, mostly custodial mothers, for adult offspring in university rather than the adult offspring directly, had been the tax treatment of such payments.

Honourable senators, Bill C-93 eliminated the tax treatment, the tax deduction. It eliminated the singular rationale, the singular incentive, that had ever existed for any divorced spouse to pay the ex-spouse money as child support for adult offspring in post-secondary education. A consequence of Bill C-93 was that the true interests of the adult offspring and the wishes of non-custodial parents emerged. Such should have prevailed to permit adult offspring to become the direct recipients of that money for their own maintenance for education from their non-custodial parent, mostly fathers. Further, the contributions to that same adult offspring from their custodial parent, mostly mothers, could be identified clearly. However, this was not to be. This natural, legal, economic and familial consequence, being the direct payment from mostly fathers to adult offspring was not to be. In fact, this natural result was willfully blocked by Bill C-41. The natural result was averted and in its stead Bill C-41, by means of its definition of 'child of the marriage' by the Divorce Act, contrived to compel those parents, mostly fathers, to subordinate the financial interests of their adult offspring in university to the financial interest of the ex-spouse. It therein gave ex-spouses a new and greater financial interest than it did to the adult offspring. The deliberate redirection of this money, of these financial payments from the adult offspring to the ex-spouse, reveals the true nature of Bill C-41. It shows clearly that so-called child support for adult offspring is really spousal support for ex-spouses. The financial needs of the adult offspring were and are subordinate and secondary to the primary financial interests of the ex-spouse. This is what 1997's Bill C-41 did by proposing to insert 'pursuit of reasonable education' into the definition of "child of the marriage", and by defining "adult offspring" as "children still in the custody of the custodial parent." Imagine a parent having custody of a 25-year-old able-bodied and able-minded young man or woman.

Honourable senators, often the actual financial benefit to the adult offspring is minimal because, as we know too well, the paying parent has no guarantee that the adult offspring will benefit financially and, as is too common, the paying parent has no knowledge of the school or courses the offspring is enrolled in. Most often, the paying parent has little or no influence in the choice of university and courses. There is no accountability whatsoever. In order to correct the matter, the paying parent, mostly the father, is in the absurd position of trying to vary

custody by a new custody order. Imagine, honourable senators, non-custodial parents, mostly fathers, going to court to vary a custody order to obtain custody of a 25 year old from the custodial mother. It is even more ridiculous than a custodial parent having custody of that 25-year-old young adult. The backwardness is made manifest. Financial maintenance of adult offspring is a matter of conscience for parents in both intact and divorced families. The parents' support of adult offspring attending university is a matter of conscience. It is not a matter of legal obligation.

Honourable senators, I shall turn now to some case law. The 1997 British Columbia Supreme Court case of *Garrow v. Garrow* was about a 24-year-old offspring on whose education and other items the father had spent over \$50,000 in 1994 and 1995. The mother sought an additional \$42,000 in child support, supposedly for this 24 year old's education. Mr. Justice Curtis granted her only \$15,000 saying, at paragraph 22, Quick Law version:

That which generosity or affection might motivate a person to pay to a child's support is one thing, that which the law ought to compel is entirely another matter.

Honourable senators, I move to the 1992 Nova Scotia Supreme Court case *Crook v. Crook*. The ex-spouse was seeking spousal support for herself of \$2,000 per month plus child support for two adult offspring, a 23 year old and a 22 year old, both of whom already had university degrees. She was seeking a declaration that those two adult offspring were children of the marriage and in her custody. Mr. Justice Goodfellow said, at paragraph 24, Nova Scotia Reports, Volume 115, Second Series:

...however, the words of the Divorce Act "or other cause, to withdraw from their charge or to obtain the necessities of life" has been interpreted by the courts to essentially crystallize a moral obligation to provide one's children with an education into a legal obligation.

Mr. Justice Goodfellow ruled that those two adult offspring were not "children of the marriage", saying, at paragraph 27:

There is no doubt that the parents wished their children to pursue a university education. I have not conducted any exhaustive research; however, I do not recall ever seeing a case, other than by agreement, where an order for support was made for a child who had already obtained a university degree or where the child had already completed education to the level of a diploma in a trade or vocation. It seems to me there should be a reasonable prima facie limitation to the words 'other cause' and that in cases such as this where both children have already obtained university education to the bachelor degree level, there would have to be exceptional circumstances to warrant fixing of a legal obligation beyond that level. I find that neither Matthew or Michelle come within the definition of 'child' in the Divorce Act of Canada.

Mr. Justice Goodfellow also noted that Mr. Crook's financial abilities were greatly diminished and did not grant her child support for the adult offspring but did grant Mrs. Crook \$1,300 per month in spousal support.

Honourable senators, as Senator Jessiman told us, the question turns on the judicial construction of the words 'or other cause' and Parliament's intention on enacting those words. Clearly, when the 1968 Divorce Act created its first definition of the "child of the marriage" to include adult offspring beyond the age of majority, Parliament intended that no seriously ill, mentally or physically disabled offspring should be left as the sole financial liability of one divorced parent or the other. The intention was physical or mental disability of such a kind as to render the "over the age of majority adult offspring" incapacitated and unable to support themselves. The intention of Parliament has always been disability and sickness caused by some cause or reason beyond the control of their persons: that is, disability caused by nature, accident or vicissitudes or life condition or Act of God. Parliament, in its remedial provisions of the Divorce Act, has never intended to impose upon any divorced father, or any divorced mother, excessive legal responsibilities or any responsibilities in excess of those of non-divorced, still married parents. Parliament intended to create no economic privilege for children of divorce. Neither did it intend any economic opportunity for custodial parents, mostly mothers. Finally, a university education is not an incapacity or disabling life condition. Obtaining a university education is an enabling life-state and a self-induced state.

Honourable senators, I move now to parental alienation and the relationships between support paying parents and their adult offspring. Parental alienation is the shutting out of parents, mostly fathers, from their children's lives, and from any meaningful involvement in their children's lives. The 1986 Ontario Supreme Court case *Law v. Law* was about two adult offspring, Kimberly, aged 22, and Lisa, aged 19. The father on marrying the mother had adopted the two children from her previous marriage. Though only married for seven years, this man had faithfully paid child support for them until the eldest was 21, even though both of these adult offspring, instigated by their mother, had repudiated any relationship with him. The alienated father brought an application to terminate child support payments for these two adult offspring. Mr. Justice Fleury terminated the support and in his 1986 judgement said, at page 462, Report of Family Law, Volume 2, Third Series:

● (1920)

Kimberley has certainly withdrawn from the applicant's charge as a result of her failure to maintain any contact with him. Although it is sufficient that she be in the custodial parent's charge, I am of the view that where, as here, a mature child unilaterally terminates a relationship with one of the parents without any apparent reason, that is a factor to be considered by the trial judge in determining whether it would be 'fit and just' to provide maintenance for that child. A father-child relationship is more than a simple economic dependency. The father is burdened with heavy financial

responsibilities and the child has very few duties in return. It seems reasonable to demand that a child who expects to receive support entertain some type of relationship with his or her father in the absence of any conduct by the father which might justify the child's neglect of his or her filial duties.

Honourable senators, Senator Jessiman and I had explained that the courts had pressed the words "or other cause" prior to 1997. In 1997, in Bill C-41, the Senate, supported by the House of Commons, specifically rejected and defeated the concept "pursuit of reasonable education" as a ground for imposing legal obligations under the Divorce Act for the financial maintenance of adult offspring.

Despite this clear expression of Parliament's intention about the legal obligation of divorced parents and its clear instructions to the courts, the courts have continued to expand the words "or other cause" simply to include the claims of ex-spouses for child support payable to themselves. Therefore, my Bill S-12 proposes to delete those three words from the current Divorce Act to avoid judicial exaggeration of those words to mean that which Parliament never intended so as to attain outcomes contrary to Parliament's intention, outcomes not in the best interest of the children but certainly in the best interest of the ex-spouse, the custodial, recipient parent.

Senator Jessiman and myself had obtained a commitment that the Senate Standing Committee on Social Affairs, Science and Technology would monitor the implementation of the child support guidelines. On November 5, 1997, the Senate gave the committee the order of reference to do so. The committee addressed the issue of adult offspring of divorced parents and addressed it in its interim report, introduced in the Senate on June 18, 1998.

The interim report went to the heart of the matter. The heart of the matter is that financial obligations to adult offspring of divorce should be payable directly to the adult offspring by the divorced parent. The interim report's chapter entitled "Areas of Particular Concern, Part A: Special or Extraordinary Expenses" stated at page 9:

When the Committee previously studied Bill C-41 and the then draft Guidelines, certain Senators were concerned, and have remained concerned, about the treatment of support for adult children who are pursuing post-secondary education.

The interim report continued:

The Committee heard testimony as to some of the anomalous situations that can arise as a result of including these adult children within the basic table amounts. For example, it is possible for a custodial spouse to receive significant amounts of money for such a child, while the child attends university in another city. The degree to which the recipient of the money passes it along to the student is entirely discretionary.



The interim report concluded:

Thus, both parents would be responsible according to their financial means, and the means of the child, and the recipient spouse would not be in a position to benefit unduly.... In most cases, we believe that the obligations of each parent would best be payable directly to the child.

The interim report's fifth recommendation recites this fact that the obligations of each parent would be best payable directly to the child, the adult offspring.

Honourable senators, Bill S-12 offers my solution, the deletion of those three words "or other cause" from the Divorce Act. I believe that this will remedy the present problems. This will uphold the maxim that, in law, a person cannot be both child and adult simultaneously. It also will uphold the principle that adult offspring should not be a source of economic enrichment for ex-spouses. This economic enrichment is often a financial disadvantage to the adult offspring.

The courts have transformed a moral obligation of parents to contribute towards the post-secondary education of their adult offspring into a legal obligation solely and singularly in instances of divorce. This transformation has created a class of adult offspring with exclusive economic rights to financial maintenance. Further, by the failure to take account of the financial means of the custodial parent, mostly mothers, and by focusing primarily, if not solely, on the income of the non-custodial parent, mostly fathers, the present situation has become a national crisis. Bill S-12 will place post-secondary education of adult offspring and the financing thereof into the field of mutual agreement between adults.

Most non-custodial parents of means will assist their adult offspring for post-secondary education, but they do so based on trustful and voluntary cooperation. As I said, the essential problem has always been the recipient of that financial assistance, the custodial parent, mostly the mother, or the adult offspring.

The evidence is strong and overwhelming that correction is needed in the administration of civil justice in family and divorce law. Senate committee reports have said this; the Special Joint Senate and House of Commons Committee on Child Custody and Access has said this; opinion polls have said this; the country's public opinion has said this; but still Minister of Justice Anne McLellan continues to say that she will take no action before the year 2002.

Honourable senators, the law of child support in Canada in divorce in respect of adult offspring is sadly in need of change and needs immediate attention and reform. I urge honourable senators to give Bill S-12 their due and proper consideration.

On motion of Senator Sparrow, debate adjourned.

## BUSINESS OF THE SENATE

**Hon. Dan Hays (Deputy Leader of the Government):** Honourable senators, I have consulted with colleagues opposite, on this side, and others, and I believe that the only item on the Order Paper that a senator wishes to address is the one standing in the name of Senator Prud'homme. Therefore, I propose, honourable senators, that following Senator Prud'homme's intervention on that item, we revert to Government Notices of Motion and then to the adjournment motion.

## ONTARIO

### REGIONAL RESTRUCTURING LEGISLATION— REFUSAL TO DECLARE OTTAWA OFFICIALLY BILINGUAL— INQUIRY—DEBATE CONTINUED

On the Order:

Resuming debate on the inquiry of the Honourable Senator Poulin calling the attention of the Senate to the decision of the Ontario Government not to adopt a recommendation to declare the proposed restructured City of Ottawa a bilingual region.—(*Honourable Senator Prud'homme, P.C.*).

**Hon. Marcel Prud'homme:** Honourable senators, this inquiry stands in the name of my colleague and friend Senator Poulin. If no one speaks to it today, it will fall from the Order Paper, something we do not want to happen.

First, I wish to draw the attention of honourable senators to the speech the Honourable Senator Rivest delivered earlier today. I hope all honourable senators will read his speech because he spoke very rapidly when delivering it. I have a great deal of respect for the interpreters who struggled to follow what he said. Although it was delivered rapidly, it is a speech that must be read. I am not saying that I am in favour or against the bill to which he spoke. As I say, I hope that everyone will take the time to read the speech of Senator Rivest. After all, all these speeches are related in one way or another to the motion to which I am about to address.

• (1930)

It is inconceivable to me as a "Canadien français" — I hope they do not translate that as "French Canadian" — that the capital of my country, Canada, would be unilingual English.

I see Senator Finestone, who travels internationally and must defend Canada's position. She was elected recently to the executive of the Inter-Parliamentary Union. Senator Finestone and I often disagree, but I admire her because she is a great liberal.

Having said that, there is no doubt that it would be inconceivable that Ottawa would be declared a unilingual capital and claim to be the capital of all Canadians. It is related to what Senator Rivest tried to tell us earlier.



It would totally defeat the principles of one of the greatest champions of "les droits Canadien français Acadien," the Honourable Senator Robichaud. I campaigned for him in 1960. He may not even remember. It would be inconceivable for him — and I can see by his motions that he agrees — that the capital of Canada would not be bilingual.

I know that some people of Ottawa do not like "la langue française" or "les Canadiens français" or "la religion catholique," but they must realize that they live in the capital of Canada. It is not parochial. If Canada is to be Canada as we want Canada to be Canada, we must respect the specificities, one of which is highly augmented by Senator Robichaud. That specificity is augmented by our Speaker *pro tempore* who is from New Brunswick and is doing a fabulous job, by Senator Bacon, Senator Rivest, Senator Maheu and Senator Corbin. This is Canada at its best.

I look at the diversity of Canada. We must stop going around the world, as some of us will do, if we are not able when we come back to convince each other that at least Ottawa should be a bilingual capital. That does not mean everyone must speak to everyone else in a language they do not want to speak.

Honourable senators know where I stand. I saved the day for the Honourable Senator Poulin. With her permission, I wish to

adjourn the debate in the name of Senator Carstairs. That had been agreed to with Senator Poulin earlier.

On motion of Senator Prud'homme, for Senator Carstairs, debate adjourned.

#### ADJOURNMENT

Leave having been given to revert to Government Notices of Motions:

**Hon. Dan Hays (Deputy Leader of the Government):** Honourable senators, I give notice that tomorrow, April 7, 2000, I will move:

That when the Senate adjourns today, it do stand adjourned until Monday, April 10, 2000, at 4 p.m.

Perhaps I should clarify. I am giving notice today of a motion that I will put tomorrow. Normally we ask for leave on the same day, but I am doing it a little differently today. I am giving notice, as required by the rules, of a motion that I intend to put tomorrow, Friday, when we are sitting. That motion can be debated tomorrow.

The Senate adjourned until Friday, April 7, 2000, at 9 a.m.

# CONTENTS

Thursday, April 6, 2000

	PAGE		PAGE
<b>Visitors in the Gallery</b>		Senator Boudreau .....	994
The Hon. the Speaker .....	991		
<hr/>			
<b>SENATORS' STATEMENTS</b>		<b>The Economy</b>	
<b>Nunavut</b>		Influence of Provinces Governed by Progressive Conservative Party on Current Growth Trend. Senator Di Nino .....	995
First Anniversary Celebrations. Senator Adams .....	991	Senator Boudreau .....	995
<b>Youth Manifesto</b>		<b>Finance</b>	
Senator Hays .....	991	Accumulation of Surplus Funds—Influence of Goods and Services Tax and Free Trade. Senator Lynch-Staunton .....	996
<b>Speech on Nisga'a Final Agreement</b>		Senator Boudreau .....	996
Senator Carney .....	991	Senator Forrestall .....	996
<b>The Late Sir Stanley Mathews</b>		<b>United Nations</b>	
Senator Mahovlich .....	991	Kosovo—Resolution on Return of Serbian Force—Government Policy—Request for Answer. Senator Forrestall .....	996
<b>Canada Post</b>		Senator Boudreau .....	996
Refusal of Commemorative Stamp on Seventy-fifth Anniversary of United Church. Senator Wilson .....	992	<b>Canadian Broadcasting Corporation</b>	
<hr/>			
<b>Visitors in the Gallery</b>		Nova Scotia—Effect of Proposed Cutbacks on Employees in Halifax. Senator Oliver .....	996
The Hon. the Speaker .....	992	Senator Boudreau .....	996
<hr/>			
<b>ROUTINE PROCEEDINGS</b>		<b>Transport</b>	
<b>Canadian Institutes of Health Research Bill (Bill C-13)</b>		Proposed Increase in Number of Driving Hours for Truck Drivers. Senator Spivak .....	996
Report of Committee. Senator Kirby .....	993	Senator Boudreau .....	997
<b>Business of the Senate</b>		<b>Business of the Senate</b>	
Senator Hays .....	993	Senator Murray .....	997
Senator Kinsella .....	993	Senator Milne .....	997
<b>Canada-Europe Parliamentary Association</b>		Senator Hays .....	998
Report of Canadian Delegation to the Organization for Security and Cooperation in Europe Parliamentary Assembly Standing Committee Meeting in Vienna, Austria. Senator Grafstein ....	994	Senator Lynch-Staunton .....	998
<b>National Finance</b>		<b>Intergovernmental Affairs</b>	
Notice of Motion to Authorize Committee to Apply Documentation on Study of Emergency and Disaster Preparedness from Previous Session to Current Study. Senator Murray .....	994	Visit of Premier of Quebec to France—Speech Outlining Provincial Government's Position on Referendum Clarity Bill—Government Position. Senator Kinsella .....	998
<hr/>			
<b>QUESTION PERIOD</b>		Senator Boudreau .....	999
<b>Acadian National Holiday</b>		<b>Foreign Affairs</b>	
Omission of Notification on Canadian Calendar. Senator Comeau .....	994	France—Possible Endorsement of Secession by Quebec— Government Position. Senator Kinsella .....	999
Senator Boudreau .....	994	Senator Boudreau .....	999
<b>Human Resources Development</b>		<b>Referendum Clarity Bill</b>	
Growth of Employment Insurance Fund—Disbursement of Surplus Funds. Senator Stratton .....	994	Comments by Premier of Quebec During Visit to France. Senator Kinsella .....	999
<hr/>			
		Senator Boudreau .....	999
		<b>Fisheries and Oceans</b>	
		Ucluelet-Tofino, British Columbia—Request for Replacement of Leasehold Fish Licensing System. Senator Carney .....	999
		Senator Boudreau .....	999
		<b>Delayed Answer to Oral Question</b>	
		Senator Hays .....	1000

	PAGE		PAGE
<b>Statistics Canada</b>		Senator Finestone .....	1009
Possibility of Lowering Threshold for Cities to Achieve Metropolitan Status.		Senator Andreychuk .....	1011
Question by Senator Robertson.		Senator Grafstein .....	1012
Senator Hays (Delayed Answer) .....	1000	Senator Murray .....	1014
		Senator Joyal .....	1015
<b>Business of the Senate</b>		Senator Beaudoin .....	1017
Senator Kinsella .....	1000	Senator Gill .....	1018
Senator Hays .....	1001		
<hr/>			
<b>ORDERS OF THE DAY</b>		<b>Bill to Give Effect to the Requirement for Clarity as Set Out in the Opinion of the Supreme Court of Canada in the Quebec Secession Reference (Bill C-20)</b>	
<b>Canada Business Corporations Act</b>		Second Reading—Debate Continued. Senator Oliver .....	1020
<b>Canada Cooperatives Act (Bill S-19)</b>		Senator Hays .....	1022
Bill to Amend—Second Reading. Senator Tkachuk .....	1002	Senator Poulin .....	1024
Senator Kirby .....	1004	Senator Roche .....	1025
Referred to Committee. ....	1004	Senator Rivest .....	1027
		<b>Divorce Act (Bill S-12)</b>	
<b>Nisga'a Final Agreement Bill (Bill C-9)</b>		Bill to Amend—Second Reading—Debate Continued. ....	1029
Third Reading—Debate Continued. Senator Carney .....	1005	Senator Cools .....	
Senator Hays .....	1005		
Senator Sibbeston .....	1005	<b>Business of the Senate</b>	
Senator Kinsella .....	1006	Senator Hays .....	1035
Senator Tkachuk .....	1007		
Senator Sparrow .....	1007	<b>Ontario</b>	
Senator Lynch-Staunton .....	1007	Regional Restructuring Legislation—Refusal to Declare Ottawa Officially Bilingual—Inquiry—Debate Continued. ....	1035
Senator Corbin .....	1007	Senator Prud'homme .....	
Senator Cools .....	1007		
Senator Prud'homme .....	1008	<b>Adjournment</b>	
Senator Mahovlich .....	1008	Senator Hays .....	1036







*If undelivered, return COVER ONLY to:*  
Public Works and Government Services Canada —  
Publishing  
45 Sacré-Coeur Boulevard,  
Hull, Québec, Canada K1A 0S9











